

EXHIBIT Q

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF INDIANA
3 MATTHEW BISSONNETTE,)
4)
5 Plaintiff,)
6)
7 vs.) Case No. 1:15-cv-00334
8)
9 KEVIN PODLASKI and CARSON)
10 BOXBERGER, LLP,)
11)
12 Defendants.)
13)
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ORAL DEPOSITION OF
ALAN ENSLEN
JANUARY 24, 2017

ORAL DEPOSITION of ALAN ENSLEN, produced
as a witness at the instance of the Defendants, and
duly sworn, was taken in the above-styled and
numbered cause on the 24th of January, 2017, from
10:35 a.m. to 3:03 p.m., before Karen L. Shelton,
RDR/CRR/CSR in and for the State of Texas, reported
by machine shorthand at the offices of Johnston
Tobey Baruch, 3308 Oak Grove Avenue, Dallas, Texas,
pursuant to the Federal Rules of Civil Procedure and
the provisions stated on the record or attached
hereto.

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2
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E X H I B I T S

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1 ALAN ENSLEN,
2 having been first duly sworn, testified as follows:
3 E X A M I N A T I O N
4 BY MR. FURMAN:
5 Q. Good morning, Mr. Enslen.
6 A. Hi, Mark. How are you?
7 Q. It's Mike, but you can call me Mark.
8 A. I'm sorry.
9 Q. You can call me anything you like as long
10 as you're not calling me late for dinner.
11 A. Please call me Alan.
12 Q. Okay. Mr. Enslen, I know you know these
13 rules, but before we begin, just a couple of
14 reminders, first that please keep your answers
15 verbal. The reporter, as you know, is taking down
16 every word that we exchange. And also, if you could
17 wait until my question is over and then you can
18 respond and we don't talk over each other. That's
19 essentially the ground rules. Do you understand?
20 A. Yes.
21 Q. Mr. Enslen, could you just let me know
22 what you did to prepare for this deposition today.
23 A. I met briefly yesterday with Mr. Johnston
24 and Mr. Tobey and reviewed some of the documents
25 that I anticipate are going to come up today,

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1 including documents related to the No Hero
2 prepublication security review.
3 Q. I want to get to the documents in a
4 moment. Have you been compensated for your time
5 yesterday and today?
6 A. No.
7 Q. Do you plan to be compensated for your
8 time yesterday and today?
9 A. I anticipate being reimbursed for
10 expenses, for out-of-pocket expenses but not for
11 time.
12 Q. Are you keeping time in connection with
13 your preparation and your deposition today?
14 A. Yes. I mean, I'm aware of what the time
15 is going into, I'm just not billing for it.
16 Q. Do you anticipate billing at any point?
17 A. No.
18 Q. Is there a particular reason why you're
19 not doing that?
20 A. I think Matt has paid enough money to
21 lawyers and, frankly, trying to -- trying to help
22 him out a little bit. It's -- you know, we could
23 revisit that issue if it became otherwise, but right
24 now just trying to, you know, just to do this on a
25 pro bono basis.

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1 Q. When you refer to Matt, you're obviously
2 referring to Mr. Bissonnette?
3 A. Mr. Bissonnette, yes.
4 Q. Understood. Now, let me know what
5 documents you reviewed in preparation for your
6 deposition today.
7 A. Again, it was the documents that I
8 provided pursuant to the discovery request earlier
9 in the case. I briefly looked over those. I looked
10 at a few documents that I believe you had designated
11 as being at issue today or that you wanted to talk
12 about today. I looked over those. I looked over
13 some of the pleadings in this case. That's
14 predominantly what I looked at.
15 Q. How much time did you spend doing that?
16 A. Looking at documents alone?
17 Q. Yeah.
18 A. Three hours.
19 Q. And how much time did you spend speaking
20 with Mr. Johnston and Mr. Tobey?
21 A. I think we met for close to three hours,
22 maybe a little less than that.
23 Q. Now, you mentioned documents that were
24 provided in connection with discovery requests. Can
25 you just give me a description of what those

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1 documents were?
2 A. Yeah, they were really all related to the
3 prepublication security review for the manuscript he
4 wrote.
5 MR. FURMAN: Because we're going to refer
6 to the two books in this deposition, and I'm
7 speaking to Mr. Tobey, I realized that we didn't
8 mark them as exhibits. I'm going to do that just so
9 that we have them in the record.
10 MR. TOBEY: Sure.
11 MR. FURMAN: So these are my two copies.
12 I don't think that they were marked up in any
13 particular way when I read them. I just want to
14 make sure there's no -- nothing in them that's mine.
15 But these are my books that I bought off of Amazon.
16 So the first one I'd like to mark is the
17 book No Easy Day. That would be Exhibit 132. And
18 the exhibit after that would be book No Hero. It
19 would be Exhibit 133.
20 (Exhibits 132 and 133 marked)
21 BY MR. FURMAN:
22 Q. I'm going to show you what's been marked
23 as Exhibit 132 and Exhibit 133. Just let me know if
24 you have seen these two books before.
25 A. Yes.

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1 Q. And did you read them both?
2 A. Yes.
3 Q. You assisted Mr. Bissonnette in connection
4 with No Hero, which is Exhibit 133?
5 A. That's correct.
6 Q. Did you have any involvement with No Easy
7 Day in terms of its publication?
8 A. No, I did not.
9 Q. Okay. But you had read No Easy Day before
10 or during the time that you worked with
11 Mr. Bissonnette on No Hero?
12 A. I actually read No Easy Day prior to ever
13 meeting Mr. Bissonnette, just out of interest, so I
14 was familiar with the book.
15 Q. How did you first learn about the book?
16 A. I'm a member of the special operations
17 community myself from military service, so this was
18 widely known and anticipated as soon as it came out.
19 So, you know, it was just out of my interest through
20 the military channels.
21 Q. Did you hear about the book before it was
22 published?
23 A. I don't recall if I heard about it before
24 it was published. I just was -- you know, sometime
25 probably shortly after it came out, I was aware of

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1 it because it was, you know, widely talked about
2 within the channels of, you know, special operations
3 personnel. It's a fairly tight community, so --
4 Q. Do you know Kevin Podlaski?
5 A. I do not.
6 Q. Have you ever met him?
7 A. I have not.
8 Q. Have you ever heard of him before?
9 A. I have heard of him now, but I had not
10 heard of him before anything related to, you know,
11 the No Easy Day issues.
12 Q. You're currently a partner at Maynard
13 Cooper Gale?
14 A. Maynard Cooper and Gale.
15 Q. And Gale.
16 A. Uh-huh.
17 Q. And where is that law firm located?
18 A. Headquartered in Birmingham, Alabama.
19 Q. And how long have you been a partner or
20 shareholder at that law firm?
21 A. Give me a second to do the math. Eleven
22 years.
23 Q. So I want to get a short biography of you.
24 Could you tell me the year that you graduated law
25 school and what bars you are admitted to?

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1 A. Sure. Graduated law school from
2 University of Alabama Law School in 1997 and took
3 the bar. Was admitted in Alabama shortly
4 afterwards. Then actually went and did an LL.M. in
5 international trade law at Georgetown University in
6 Washington, D.C., for a year and then returned to
7 Birmingham and started as an associate at Maynard
8 Cooper in 1998. And I believe it was during that
9 year that I was also admitted to the D.C. bar, and
10 those remain the only two bars that I'm, you know,
11 that I'm a member of.
12 Q. Have you served in the military?
13 A. Yes.
14 Q. Can you give me some details about your
15 military service?
16 A. Sure. I was an ROTC student at Auburn
17 University and graduated, was given a regular Army
18 commission in 1986. And then served on active duty
19 from 1986 until 1994, first as an infantry officer
20 and then as a special forces officer.
21 And then exited military service in 1994,
22 became a Alabama national guardsman at that time,
23 serving in the reserve component during law school,
24 and then continued to serve as a national guardsman
25 until early 2001.

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1 Transferred to the Army Reserve at U.S.
2 Special Operations Command in 2001, I think it was
3 February. Then later that year, right after 9/11
4 occurred, was recalled to active duty and spent
5 roughly a year and a half back on active duty.
6 Q. Where did you serve during your time on
7 active duty?
8 A. On Operation Enduring Freedom.
9 Q. Were you abroad or here?
10 A. No, I was deployed. There were multiple
11 deployments, so it's --
12 Q. So you were in -- Operation Freedom was
13 Iraq?
14 A. No.
15 Q. That was --
16 A. Operation Enduring Freedom was
17 Afghanistan.
18 Q. Afghanistan. Okay.
19 A. But it's also that region, so there were
20 deployment sites throughout the region.
21 Q. What was your job?
22 A. I was an Army special forces officer
23 assigned specifically to Special Operations Command
24 Central during that time.
25 Q. Who reported to you?

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1 A. I'm sorry?
2 Q. Who reported to you? What kind of -- what
3 was the chain of command and where did you fit in
4 it? I just want to get an idea of it.
5 A. Well, I worked for the commander of
6 Special Operations Command Central is the best way
7 to put it. And it was -- particularly in those
8 days, you know, the early part of the deployment,
9 there were -- I'm thinking how to describe it --
10 emerging assignments, so, as a joint special forces
11 officer, joint special operations officer, so I
12 could just give you a general sense.
13 I mean, it was -- at the time when the
14 Special Operations Command was locating forward in
15 preparation for the initial operations in
16 Afghanistan, there were, you know, multiple tasks to
17 be done at that time. And so it was related to
18 that.
19 And as different projects emerged, members
20 of Special Operations Command Central would, you
21 know, form, you know, teams, if you will, not
22 necessarily what they were always called, but, you
23 know, to accomplish certain missions. And so at
24 that time I deployed probably to, I don't know,
25 seven or eight countries in that region.

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1 Q. So was it combat missions? You weren't
2 performing legal work then at that time.
3 A. No, I am not a JAG officer, so I am not.
4 Like I said, I had started as an infantry officer,
5 became a Special Forces officer. So throughout the
6 rest of my career, my branch in the Army was Special
7 Forces. As you may know, within the Army, unlike
8 the other services, the Army is your branch but then
9 you have something called your branch, you know,
10 within that.
11 And so, for example, infantry, armor,
12 artillery, you know, special forces, aviation,
13 things like that. So I was a special forces
14 officer, and so found myself at Special Operations
15 Command Central, SOCCENT as it's called. That's
16 S-O-C-C-E-N-T, all caps. There -- it's a joint
17 command, so it's Army, Navy, Air Force, Marines, and
18 so it was -- the way I'm portraying it sounds like
19 it's disorganized, but it actually isn't. You have
20 a joint team that's put together for whatever the
21 mission is, and at that time there were a lot of
22 emerging tasks going on. So some were more, you
23 know, combative than others would be one way to put
24 it. It did include Afghanistan, you know, included
25 a lot of other countries there within the region,

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1 depending on what the task was at the time. And
2 deployments were back and forth because there were
3 different things going on in the initial stages of
4 Enduring Freedom.
5 Q. When did that deployment come to an end?
6 A. I returned, I would say, November 2002,
7 somewhere around there.
8 Q. And did your military career come to an
9 end as far as active duty at that point?
10 A. No. Well, yes, as far as active duty,
11 that was -- I had stints of active duty after that,
12 but they were more what would be called TDY or
13 temporary duty rather than actually going back on
14 active duty. So you're serving in an active status
15 but you're not back on the active rolls. You're
16 doing it as a reservist, that kind of thing, so --
17 Then I continued, just for completion
18 here, I continued as a reserve officer serving at
19 U.S. Special Operations Command, again as a special
20 forces officer, not -- I've never been a JAG. I've
21 never been -- you know, I get drug into legal things
22 sometimes because of my civilian side and what I do
23 there on occasion, but I'm not a JAG officer. So
24 continued serving at USSOCOM up until 2014 and then
25 in 2014 finally retired, so that's --

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1 Q. What was your rank at the time of your
2 retirement?
3 A. Lieutenant colonel. And I should say also
4 just, you know, for completeness and for the
5 record's sake, at the time of 9/11 -- I know we
6 started on my legal career first at Maynard Cooper.
7 I actually left Maynard Cooper in 2000 and moved to
8 Washington, D.C., to practice international trade
9 law because, as I mentioned, I had gotten the LL.M.
10 in international trade at Georgetown. So I was
11 actually living in D.C. practicing with a different
12 firm. I just wanted to make sure that -- you know,
13 I haven't been at Maynard Cooper continuous all
14 through.
15 And so I was actually practicing at a law
16 firm, King & Spalding, in Washington, D.C., in their
17 international trade group when September 11th
18 occurred when I got recalled to active duty. And
19 then when I returned from that active duty stint, I
20 went back to King & Spalding and then still
21 practiced in D.C. until the traffic finally drove me
22 away from D.C. and back to Alabama. And that's when
23 I returned to Maynard Cooper.
24 Q. What year did you return back to Maynard
25 Cooper?

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1 A. It was late 2003.
2 Q. What -- if you were to describe your
3 day-to-day practice, how would you describe it, what
4 areas of law?
5 A. My practice is focused on international
6 trade. And, you know, if I was going to say one
7 thing broader, international trade and global
8 anticorruption, predominantly U.S. export controls,
9 you know, defense exports and then commercial dual
10 use exports, economic sanctions programs that the
11 U.S., you know, Government maintains.
12 And then global anticorruption, U.S.
13 Foreign Corrupt Practices Act, UK Bribery Act,
14 things that U.S. businesses, you know, run into
15 basically in doing business overseas. My practice
16 is focused, I would say, about half on the defense
17 industry, maybe a little bit more than half, so I
18 work with a lot of, you know, defense contractors,
19 government contractors. But, you know,
20 predominantly the common thread is there is an
21 international or international trade tie to all the
22 clients that I do work for.
23 Q. Have you ever been deemed an expert in
24 court on any particular topic?
25 A. No, I have not.

<p>Page 17</p> <p>1 Q. Have you ever prepared an expert report 2 for any particular legal matter? 3 A. No. 4 Q. Have you prepared an expert report in 5 connection with this matter? 6 A. No. 7 Q. In the course of your military career, 8 have you ever signed a classified information 9 nondisclosure agreement or otherwise known as a 10 CINA, C-I-N-A? 11 A. Yes. 12 Q. On how many occasions have you done that? 13 A. I won't be able to come up with an exact 14 answer because essentially you -- those are -- when 15 you have a permanent change of station, you'll often 16 have to reexecute those documents. But the 17 classified information nondisclosure statement, the 18 first one I signed, probably signed one as a cadet, 19 ROTC cadet at Auburn, because there was a background 20 investigation that was done there, although no 21 classified information was shown at that time. 22 But 1986 would be the first time that at 23 Fort Bragg, my first assignment was at -- well, let 24 me back up. Actual first assignment was on the 25 training side at Fort Benning, Georgia. I'm sure I</p>	<p>Page 19</p> <p>1 paperwork that's filled out. Sometimes it's, you 2 know, it's more of a -- I wouldn't say a big deal, 3 but it would be, you know, more isolated as an 4 incident. Just really depends on administratively 5 how it's put in front of you. 6 And sometimes if you're in-processing into 7 a unit, you know, it's going to be a little bit 8 different than if you're going into a school or 9 something like that, into a training for the next 10 six months or something like that, then, you know -- 11 you know, if you're in a classroom of 110 other 12 people, you know, they just hand out the forms and 13 people are signing them and that kind of thing. But 14 you're always given a chance to review it to make 15 sure that you understand what the obligations are 16 and take it seriously. 17 Q. How about what's known as a nondisclosure 18 compartmentalized -- sorry. Take it back. An SCI 19 nondisclosure agreement, S-C-I capitals, 20 nondisclosure agreement, otherwise known as a 21 DD-1847? Are you familiar with that? 22 A. Yes, I am. Now, I will say that I'm not 23 certain that DD-1847 was used the first time I 24 signed one of those, but there has always been some 25 form of a -- what I know of as a sensitive</p>
<p>Page 18</p> <p>1 signed one there in 1986. And then in early 1987 2 upon in-processing 82nd Airborne Division at 3 Fort Bragg as an infantry officer, upon 4 in-processing at Fort Bragg into the 82nd Airborne 5 Division, I would have signed one there. 6 And, you know, again, the tendency is that 7 you would reexecute one of those documents on 8 in-processing in most units. You know, that tended 9 to be the way it was. Even though it's a bit 10 redundant, they would want to make sure they had 11 that paperwork in place. So over my entire career, 12 is that your question, how many times would I have 13 done that? 14 Q. Yeah. I don't need an exact number. Is 15 it more than five, more than ten? 16 A. It's probably been close to ten, I would 17 say. 18 Q. What's the process when you signed it? Is 19 there a formality that's attached to it? 20 A. You just read it, sign it, because it's, 21 you know, it's really putting you on notice of your 22 obligations on what the standards are and -- but 23 otherwise, there's -- different units will have 24 different, you know, ways of doing it. Sometimes 25 it's just merely almost a formality like other</p>	<p>Page 20</p> <p>1 compartmented information nondisclosure statement, I 2 think is usually what they say rather than 3 agreement, but essentially the same type of thing, 4 similar to the CINA that we just talked about except 5 this is for SCI. This one is taken significantly 6 more seriously, as you would anticipate, because for 7 someone to be executing one of those, that means 8 that they are being put into an SCI billet. In 9 other words, you know, clearance is one thing and 10 access is another, as I'm sure you know when it 11 comes to classification. So I am familiar with one 12 of those documents. 13 Q. Have you ever had occasion to sign one? 14 A. Yes. 15 Q. On how many occasions? 16 A. It would be very similar to the amount of 17 times that I signed the CINA. I started -- I signed 18 into an SCI billet for the first time in 1986. So 19 that's the first time. Again, I don't remember if 20 it was a DD-1847 or not, but that's the first time I 21 signed an SCI nondisclosure statement. And that 22 would be -- those are done proximate to what's 23 referred to in the field as a read-on. If you're 24 being read on for SCI, then you're going to execute 25 one of those documents.</p>

<p style="text-align: right;">Page 21</p> <p>1 Q. Now, let me know if I am stating this</p> <p>2 correctly, but in order to be read on to an SCI,</p> <p>3 you'd have to have certain clearances, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And what kind of clearances do you have to</p> <p>6 have in order to be read on to an SCI program?</p> <p>7 A. To my knowledge, the -- and in my</p> <p>8 experience you have to have a top secret clearance</p> <p>9 in order to be granted SCI access. And, you know,</p> <p>10 my further understanding is the basis for that is</p> <p>11 the type of security investigation that is done.</p> <p>12 You know, for example, sometimes people will have a</p> <p>13 background investigation that's done on them, what's</p> <p>14 termed a BI, all caps, that will allow you to get a</p> <p>15 certain level of clearance.</p> <p>16 You know, you can't -- to my knowledge,</p> <p>17 you cannot be granted a top secret clearance based</p> <p>18 on a BI. Something is required. A different kind</p> <p>19 of investigation, a more in-depth investigation is</p> <p>20 required, you know, a sensitive background</p> <p>21 investigation usually or a special background</p> <p>22 investigation. I've heard both terms used. But</p> <p>23 what's termed in the field as an SBI is usually the</p> <p>24 investigation that's necessary.</p> <p>25 So there is an interrelationship between,</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Okay. And is that because of certain</p> <p>2 obligations that you have that you can't answer that</p> <p>3 question?</p> <p>4 A. That's correct.</p> <p>5 Q. Understood. Now, in connection with a</p> <p>6 CIA SAP program, is there, to your knowledge, any</p> <p>7 kind of specific process by which you're read on to</p> <p>8 the program?</p> <p>9 A. To make sure I understand, you're asking</p> <p>10 specifically about a CIA program as opposed to a DOD</p> <p>11 or other agency --</p> <p>12 Q. Correct.</p> <p>13 A. -- program? I don't know. And I will --</p> <p>14 to give more context to my answer is that</p> <p>15 particularly in the world, in the time of</p> <p>16 interagency operations, the joint interagency task</p> <p>17 force concept which was -- really gained a lot of</p> <p>18 traction after 9/11 and, you know, very commonly has</p> <p>19 been, you know, embraced within Operation Enduring</p> <p>20 Freedom, Operation Iraqi Freedom and the things that</p> <p>21 have occurred since then, you know, different</p> <p>22 organizations working together, you know, commonly</p> <p>23 happens.</p> <p>24 In my experience on the DOD side, which is</p> <p>25 probably the closest relevance I can bring to your</p>
<p style="text-align: right;">Page 22</p> <p>1 you know, the investigation, the clearance, and then</p> <p>2 again there's a question of access when you start</p> <p>3 talking about SCI.</p> <p>4 Q. Have you been given top secret clearance?</p> <p>5 A. Yes.</p> <p>6 Q. When did that first happen?</p> <p>7 A. 1986.</p> <p>8 Q. When you're read on a program, is there --</p> <p>9 without obviously giving me any information about</p> <p>10 the programs themselves, what's the process?</p> <p>11 A. It depends on the program. The -- and I'm</p> <p>12 not trying to be -- you know, truly that's the most</p> <p>13 accurate answer there is because some are more</p> <p>14 in-depth than others. Some require more. Some</p> <p>15 have -- some programs have, you know, requirements</p> <p>16 that go along with them, you know, levels of</p> <p>17 understanding that would be necessary to, you know,</p> <p>18 to manage and execute the operations within the</p> <p>19 program. So there's not a standard answer, but --</p> <p>20 Q. I understand. Also, I'll narrow the</p> <p>21 question down. Have you been involved ever in a</p> <p>22 CIA SAP program?</p> <p>23 A. I'm going to defer -- I'm actually -- I'm</p> <p>24 going to -- I'm not going to be able to answer that</p> <p>25 question.</p>	<p style="text-align: right;">Page 24</p> <p>1 question, to gain access to a program, you would be</p> <p>2 read on to that program. Whether a particular</p> <p>3 program could involve multiple agencies is another</p> <p>4 issue.</p> <p>5 Q. So let's take a DOD SAP program. What's</p> <p>6 the process by which you're read on?</p> <p>7 A. Normally the read-on is going to be done</p> <p>8 by what's termed, all caps, SSO, a special security</p> <p>9 officer. That's going to be at an installation.</p> <p>10 For example, every military installation that, you</p> <p>11 know, maintains a -- usually you'll hear the term</p> <p>12 also SCIF. A lot of acronyms. All caps S-C-I-F.</p> <p>13 If an installation maintains a sensitive</p> <p>14 compartmented information facility, which is</p> <p>15 obviously something that would, you know, be able to</p> <p>16 store sensitive compartmented information, there's</p> <p>17 going to be a responsible SSO involved.</p> <p>18 And again, different commands will do it</p> <p>19 different ways because, again, some units might be</p> <p>20 all one service and they do it that service's way.</p> <p>21 Other units are joint and therefore are going to --</p> <p>22 may do it a slightly different way. But within DOD</p> <p>23 channels, I'm not aware of any, you know, situation</p> <p>24 where you would gain access to a program without</p> <p>25 being read on.</p>

<p style="text-align: right;">Page 25</p> <p>1 Q. Is that a memorable event, being read on?</p> <p>2 A. It probably is the first time, but if</p> <p>3 you're accustomed to always having, you know, a top</p> <p>4 secret clearance, for example, you're always in an</p> <p>5 SCI billet, then it becomes fairly routine.</p> <p>6 I mean, I think everyone knows it's a, you</p> <p>7 know, it's a serious obligation because it's, you</p> <p>8 know, it's information that's protected at a very</p> <p>9 high level and has to be respected as such. So I've</p> <p>10 never seen anyone be cavalier about it, but it's,</p> <p>11 you know, it's also part of the administration and,</p> <p>12 you know, what you would expect, you know, when</p> <p>13 in-processing.</p> <p>14 And that's typically when it's done, when</p> <p>15 someone would come into a unit. You know, again,</p> <p>16 SCI billets are not just thrown out there, you know,</p> <p>17 at a whim. They are, you know, they are assigned at</p> <p>18 particular, you know, particular units, particular</p> <p>19 slots within units and that types of thing.</p> <p>20 Within the special operations community,</p> <p>21 as you would expect, you have quite a few SCI</p> <p>22 billets within units. So, read-ons, read-offs</p> <p>23 become, you know, not uncommon at all.</p> <p>24 Q. What do you mean by billets? Are you</p> <p>25 referring to people or information when you refer to</p>	<p style="text-align: right;">Page 27</p> <p>1 unit that doesn't require SCI. A good example is if</p> <p>2 somebody goes to a training assignment or something</p> <p>3 like that where they're an instructor or something,</p> <p>4 you know, like that as opposed to being in an</p> <p>5 operational unit, that would typically be a time.</p> <p>6 You may still have -- be in an SCI billet, but it</p> <p>7 would probably be fewer billets and fewer need for</p> <p>8 it, as you can understand, in that role.</p> <p>9 So in that way some people are read on,</p> <p>10 read off. But generally I'll say in my experience</p> <p>11 within the special operations community it's, you</p> <p>12 know, it's frequent and common in, you know, in</p> <p>13 operational assignments to be in those billets.</p> <p>14 Q. Now, are you familiar with Operation</p> <p>15 Neptune Spear?</p> <p>16 A. Yes.</p> <p>17 Q. In your mind would Operation Neptune Spear</p> <p>18 have been considered an SCI billet as you described?</p> <p>19 A. Well, I wouldn't -- I wouldn't phrase it</p> <p>20 that way, with all due respect. I mean, it's --</p> <p>21 Q. That's okay. I want to know how you would</p> <p>22 phrase it.</p> <p>23 A. Sure. Well, the billet is assigned to the</p> <p>24 position within a given unit.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 26</p> <p>1 billets?</p> <p>2 A. A billet really is -- and again, this</p> <p>3 is -- I'm not explaining this from the -- I'm not an</p> <p>4 administrative, you know, administration is not my</p> <p>5 branch within the Army, so -- but I've had to deal</p> <p>6 with a lot of it. So a billet really is more</p> <p>7 assigned to the position. And that's how, in my</p> <p>8 experience, how SCI is assigned is that -- in other</p> <p>9 words, you might hear someone say they have a top</p> <p>10 secret clearance. You know, that means one thing.</p> <p>11 Somebody with a top secret clearance that has SCI</p> <p>12 access, that's an entirely another thing. That's a</p> <p>13 different thing.</p> <p>14 Because the -- you can hold the clearance</p> <p>15 based on the background investigation, the level of</p> <p>16 investigation that you have, and there are multiple</p> <p>17 varying levels. And you may still have that</p> <p>18 clearance that would travel with you from one unit</p> <p>19 to the other, but it's very possible that you may be</p> <p>20 at one unit and you are in a position that requires</p> <p>21 you to have access to SCI and so you would be read</p> <p>22 on, you know, because you would be filling an SCI</p> <p>23 billet. In other words, it would be assigned to</p> <p>24 that position.</p> <p>25 And it's possible you could go to another</p>	<p style="text-align: right;">Page 28</p> <p>1 A. So whether a unit is -- you know, it's</p> <p>2 just an entirely different thing from a, you know,</p> <p>3 operation. Operations are done all the time and,</p> <p>4 you know, may involve, you know, or be related to,</p> <p>5 you know, information, things that are SCI</p> <p>6 potentially. It's not necessary that an operation</p> <p>7 in and of itself would be a program, although that's</p> <p>8 possible. You know, it's -- that's -- they're</p> <p>9 not -- I'm sure there are hard and fast rules. I'm</p> <p>10 not aware of exactly, you know, what constitutes</p> <p>11 becoming a program. I have some ideas, but I don't</p> <p>12 know that -- it's just a matter of, you know, how</p> <p>13 things are done.</p> <p>14 I think I see -- I would say I wouldn't</p> <p>15 make the assumption that -- I don't know whether</p> <p>16 Neptune Spear was in and of itself a separate</p> <p>17 program or not. I don't have that level. My level</p> <p>18 of understanding and knowledge of Neptune Spear is</p> <p>19 purely as a -- really as a -- in my civilian</p> <p>20 capacity reading the book and seeing the same, you</p> <p>21 know, press on it and things like that that you have</p> <p>22 probably, so --</p> <p>23 Q. Then based on your experience, I</p> <p>24 understand that you would not know or have access to</p> <p>25 information directly involving Operation Neptune</p>

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1 Spear, but based on your experience, would you -- do
2 you have a view as to whether or not Operation
3 Neptune Spear was a special access program?
4 MR. TOBEY: Objection. Form.
5 A. I really don't have enough basis in the
6 actual -- since I wasn't involved in the operation,
7 I don't know. Like I said, operations are done all
8 the time that, you know, some of them necessarily
9 may involve, you know, SCI but not necessarily as a
10 separate program, although I'm sure it could be. I
11 just -- I just don't know.
12 MR. FURMAN: I took a bit of your
13 biography off of the Maynard Cooper Gale website, so
14 I'd like to have it marked as an exhibit. It will
15 be Exhibit 134.
16 (Exhibit 134 marked)
17 BY MR. FURMAN:
18 Q. Mr. Enslen, I'll represent to you that
19 this is fairly recent that we pulled this
20 information off of the website. Just want you to
21 take a look at it and let me know if it's current or
22 it would have to be changed in any particular way.
23 A. At quick glance, it looks to be current,
24 although I can tell you it's on my to-do list to
25 revise it because the substance of it could be

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1 updated. But by and large it looks to reflect my
2 practice and background correctly.
3 Q. Okay. If I can just have it back. I'm
4 not going to quiz you on it, but my review of the
5 practice areas, you generally would list the
6 practice areas that you are involved in day to day,
7 generally, in terms of practice areas?
8 A. Our marketing department probably would do
9 that. Yes, it's -- the practice's -- the way we are
10 organized as a firm, there is a lot of overlap on
11 matters. So, for example, I'm sure white collar
12 defense may be on there. I don't spend every day
13 doing that, but there are a lot of export control
14 sanctions matters that, for example, would overlap
15 with white collar defense. So, you know, we work
16 together quite a bit, for example.
17 Same thing with, you know, international
18 business, M&A folks, or different practice areas.
19 So that's a broader practice list. If you're
20 looking at it from the terms of what I actually do
21 on a day-to-day basis, you know, international
22 trade, you know, and global anticorruption would be,
23 like I said, the focus.
24 Q. Did you know Matthew Bissonnette before
25 you undertook to represent him?

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1 A. No.
2 Q. When did you begin representing Matthew
3 Bissonnette?
4 A. My recollection, the first call -- I know
5 because it's my wife's birthday -- was the 12th of
6 September of 2013 was the first time that we spoke.
7 I believe the engagement with Maynard Cooper, you
8 know, may have officially occurred, you know, by,
9 you know, maybe a week or two before, sometime
10 within the prior month but sometime proximate to
11 September 2013.
12 Q. How do you recall that you met
13 Mr. Bissonnette?
14 A. Through one of my partners at the firm
15 became aware of him. And, you know, again, I'm not
16 sure exactly what led to their meeting, but I know I
17 was asked by my partner, you know, can you help
18 with -- you know, have you ever done, worked with
19 the Defense Office of Prepublication and Security
20 Review, to which I replied yes, that I had.
21 And so from that my, you know, my
22 engagement or my task that I worked on with Matt was
23 to help with the prepublication security review
24 process for his forthcoming book which, again,
25 became the manuscript for the book known as No Hero.

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1 Q. Who was the partner? What's the name of
2 the partner?
3 A. Andrew Kitchen.
4 Q. And do you know how Mr. Kitchen came to
5 connect with Mr. Bissonnette?
6 A. I believe it was through Cheney Literary
7 and Elyse Cheney.
8 Q. Now, you mentioned the Office of
9 Prepublication Security and Review? Is that
10 correct?
11 A. Their wordy title is Defense Office of
12 Prepublication and Security Review, so they're also
13 called DOPSR. Or you will see in some of my
14 correspondence OSR, referring to the same entity.
15 And they like to call themselves DOPSR.
16 Q. Okay. So it's DOPSR?
17 A. Correct.
18 Q. I've also seen it referred to as OPSR. Is
19 that the same unit?
20 A. I would assume that's Office of
21 Prepublication and Security Review. I would -- if
22 you're talking in the DOD context, because you do
23 realize, as you know, other agencies have a similar
24 type of office and may use that same title, but
25 within DOD I think that would be referring to the

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1 same one.
2 Q. To your knowledge, does the CIA have a
3 prepublication security review process?
4 A. Yes.
5 Q. Do they have an acronym or an office that
6 handles that?
7 A. They have an office that handles it. I'm
8 not sure what the acronym is.
9 Q. Have you ever dealt with them?
10 A. I have not dealt with them directly.
11 Q. Now, the DO -- the Department of Defense's
12 office, the DOPSR, you've dealt with them in the
13 past?
14 A. Yes.
15 Q. Where is that office located?
16 A. It's in the Pentagon.
17 Q. How is it staffed?
18 A. I'm sorry. What do you mean?
19 Q. In other words, is there one person, three
20 people, five people? What's the -- what's that
21 office comprised of?
22 A. Based on my understanding, with the caveat
23 that I've not dealt with all aspects of it, it's
24 more than one person I can tell you. It is an
25 office that is -- that has multiple roles. I

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1 know -- for example, I know they have a
2 congressional budget review responsibility. They
3 have, you know, different areas. They do things
4 other than just review, you know, review books,
5 review manuscripts and things like that.
6 They have the function to also review
7 things, you know, that are from active service
8 members that are, for example, making presentations
9 or publishing things and like that, you know, within
10 other journals and things like that. So it's not
11 just a, you know, not just in the context of a
12 private author's review.
13 But again, I do know the congressional
14 budget aspect, and I think they have a technology
15 branch who I've come in contact with also just in
16 the export control context because sometimes there
17 are different overlapping issues between the State
18 Department's Directorate of Defense Trade Controls
19 and the Defense Office of Prepublication and
20 Security Review. So they have a technical branch.
21 I'm not sure how many different branches they have.
22 Again, I know technical. I know congressional
23 review.
24 And then as far as the numbers of people,
25 I don't know. I will say that in my experience

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1 they're typically overworked and understaffed, like
2 many organizations there.
3 Q. That depends on your point of view.
4 A. Yeah.
5 Q. Tell me about your prior experience before
6 the book No Hero with the DOPSR.
7 A. I had, I would estimate, two or three
8 times that I had to interface with them over export
9 control related issues for different clients. And
10 again, without getting into specifics of those
11 issues, it would be generally situations where an
12 export control jurisdiction classification decision
13 would hinge upon the interpretation of the Defense
14 Office of Prepublication and Security Review, or at
15 least they would have significant input to a
16 jurisdiction classification issue that we were
17 trying to resolve. And so I contacted them and had
18 dealings with them, various roles relating to that.
19 Q. Did either -- you mentioned that it was
20 either two or three occasions prior to your work on
21 No Hero that you had dealt with the DOPSR, correct?
22 A. Correct.
23 Q. Did any of those occasions involve the
24 publication of a book?
25 A. Not of a book, no.

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1 Q. So was your involvement in the book
2 No Hero, was that the first time that you had
3 interfaced with the DOPSR in relation to the
4 publication of a book?
5 A. Yes.
6 Q. Who with the DOPSR did you deal with in
7 connection with No Hero?
8 A. My first call -- let me think about it
9 because there are multiple individuals there. I
10 believe it was Mr. Wally King is who I first called,
11 K-I-N-G, to really find out which branch would be
12 taking responsibility, you know, for manuscript
13 review, and then also to clarify one issue that, you
14 know, one threshold issue, which was that the DOD
15 directive and instruction, which I'm sure you're
16 familiar with, that relate to prepublication
17 security reviews, and then some internal DOPSR, you
18 know, guidance on, you know, how to file, you know,
19 how to file for a prepublication security review,
20 things like that that they had as tools to help
21 people proceed with manuscript reviews.
22 There was a little discrepancy where I
23 will say there was an inconsistency as to what entry
24 point do you want to use for this. And really what
25 I'm specifying is that in my mind it was ambiguous

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1 as to whether they wanted the manuscript submitted
2 at the component or command or agency that, you
3 know, had last employed the individual, because,
4 again, we're talking in the context of a former
5 service member, you know, in terms of the review,
6 and -- or to submit it to DOPSR directly. And so
7 that was my first entry point was to try to resolve
8 that.

9 Q. At the time that you -- well, let me just
10 follow up on that. Did you eventually resolve that
11 issue --

12 A. Yes.

13 Q. -- as to what the entry point was?

14 A. Yes.

15 Q. And how did you reach a landing on that?

16 A. Well, after asking the question, I -- you
17 know, we went forward with based on that guidance.
18 And then, of course, that guidance actually got
19 changed. Then later we wound up submitting it to
20 both, because my concern was because of all the
21 baggage that was still there and still existing from
22 the No Easy Day, you know, experience, which I was
23 not involved with, obviously, but I was aware that
24 things were going on and that, you know, I could
25 certainly see that, you know, anticipate that it was

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1 going to have effects on what we were about to do
2 for No Hero.

3 I wanted to make sure that it went into
4 the right entry point because, again, the procedures
5 were changing, and they admitted that. I mean,
6 SOCOM were changing their prepublication review
7 procedures because I know they were getting flooded
8 with books all of a sudden, you know. I wouldn't
9 say all of a sudden actually. During that period of
10 time, you know, a lot of people that had been
11 serving in OEF, OIF, and different operations were
12 writing books, so they just had a lot of
13 manuscripts. So they were in the process of
14 revising their guidelines. OSR was trying to revise
15 their guidelines.

16 So it was really nothing more than just
17 trying to administratively make sure that we didn't
18 allow this manuscript to, you know, land in a place
19 where it could, you know, be delayed or, you know,
20 run into an unnecessary road block.

21 Q. And in your prior answer you mentioned
22 during -- you referenced, quote, during that time
23 period, close quote. Are you referring to the time
24 period around the publication of No Easy Day?

25 A. Well, in the context of saying the reason

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1 they were rewriting their regs was because they were
2 getting flooded with manuscripts, if that's -- if
3 that's what you're referring to, yeah, I'm talking
4 about, you know, as OEF, OIF, which had both been
5 underway for a number of years at that point, had a
6 lot of veterans that were writing books, and so my
7 understanding is every single year they were getting
8 more and more manuscripts from service members.

9 So, again, I realize that it was, you
10 know, there was quite a bit of workload in that
11 area. So that, A, was understandable to me as to
12 why they would be revising their regs and, B, made
13 me realize I wanted to make sure that we did it the
14 most efficient way possible.

15 Q. I understand. I just want to know what
16 time period you're referring to that the regs were
17 being revised.

18 A. Well, the specific time that I was having
19 these conversations would have been December 2013
20 and into January of 2014.

21 Q. At the time that you submitted No Hero for
22 review, did you have any idea of the time period it
23 would take for the book to be -- for the security
24 review to be completed?

25 A. Well, I was aware of their guidelines,

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1 which you can find in some guidelines 30 working
2 days. I believe you can also find, you know, 45
3 days, unspecified whether working or not. So I knew
4 that was kind of a target time, but I was also, you
5 know, anticipating -- you know, I was anticipating
6 and, you know, frankly concerned about, you know,
7 the spillover effect from No Easy Day and making
8 sure that that did not in any way, you know,
9 prejudice the process for No Hero. That really was
10 my, you know, was my focal point.

11 Q. Since working with Mr. Bissonnette on
12 No Hero in connection with the review process, have
13 you assisted other military authors since that time?

14 A. Yes.

15 Q. On how many occasions?

16 A. Two.

17 Q. What books?

18 A. They're not released yet, so they're both
19 through the process but have not -- have not been
20 published, so I don't want to talk about ongoing --
21 I can't talk about ongoing client matters.

22 Q. That's totally fine. I won't ask you any
23 specifics, but could you tell me when those two
24 books were submitted to the DOPSR?

25 A. I'll have to think, this being off the top

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1 of my head. I really would like to go -- I might be
2 able to even check, you know, on my system at the
3 next break or something like that and even try to
4 come up with date parameters because I don't want
5 to -- I don't want to give you incorrect answers,
6 but it was definitely after No Hero was -- that we
7 were complete with not only the initial manuscript
8 review but also the appeal, and it was subsequent to
9 the time that No Hero was published. I realize -- I
10 remember that.

11 Q. Do you remember what year those two books
12 were --

13 A. Yes, the next one would have been filed in
14 2015, in mid-2015.

15 Q. And at this point it has not yet been
16 published?

17 A. No, it has not. It's forthcoming soon,
18 but --

19 Q. Okay. Has it been through the review
20 process?

21 A. Yes, it has.

22 Q. When did the review process -- when was
23 that completed?

24 A. The initial review?

25 Q. Yes.

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1 A. Well, again, this is --

2 Q. The final review. What I'm trying to get
3 at is I just want to understand of these two books
4 when they were submitted to the DOPSR and when each
5 of those books were finally approved in whatever
6 form for publication.

7 A. Right. Well, and to give clarity to how
8 I'll wind up responding to that, and again, I want
9 to go check some dates to make sure I don't give you
10 incorrect dates on that, on either of these other
11 two projects, but the process is always there's the
12 initial manuscript review and then there's the
13 decision by the author as to whether -- assuming
14 there are redactions of some sort as to whether they
15 want to challenge those redactions and mount an
16 appeal. And then it runs through that process
17 really a second time, essentially, during the appeal
18 phase.

19 So the length of time one takes is, you
20 know, largely affected by whether or not there is an
21 appeal. And then there are, you know, frankly every
22 book is different because it depends on how many
23 other components are involved. And I should give
24 this also to add some clarity. You know, the DOPSR
25 reviews a book, a manuscript that they receive

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1 first, and then they decide what other reviewing
2 components need to see this and what portions do
3 they need to see. And the submitter is not entitled
4 to know that information because of the, you know,
5 just because of the way that OSR, you know, proceeds
6 with the reviews.

7 And then they will send it out to those
8 reviewing components, and then they may get an
9 answer the next day back from one of them or another
10 reviewing component could take a little bit more
11 time, depending on the complexity, its own personnel
12 status, things like that. And then OSR will
13 consolidate those answers and that input and
14 presumably deconflict, you know, and things like
15 that.

16 But again, that's not something that the
17 author is going to have any -- or the author's
18 attorney is going to have, you know, visibility over
19 their discussions but not -- it's not pure
20 visibility over that. So understand that that's why
21 there are so many variables that are in one of
22 those.

23 But I will say that, you know, typically
24 I've found that OSR always -- they always strive to
25 meet their -- the target of their guidelines to try

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1 to get it as quickly as possible, if nothing more
2 than the fact that they've always got a pretty
3 steady workload of these coming in and want to clear
4 these out as fast as they can. But again, they're
5 held to the -- they're held to the reviewing
6 component time schedule.

7 Q. And there comes a point in time after OSR
8 receives the manuscript and after there's an appeal
9 process when the book in one form or another is
10 approved for publication. Is that fair to say?

11 A. Well, when you get the -- after the
12 initial manuscript goes into OSR and after that
13 initial review is done, they will send back to you
14 the manuscript which will either be, you know,
15 approved for public release as amended or approved
16 with recommendations, or they can, you know, not
17 approve it. I've not seen that happen, but -- so
18 there are different ways, but typically what they'll
19 do is presumably there are -- I've never seen a
20 situation where there wasn't some sort of redaction,
21 you know, in there.

22 And so you'll get that back and you get a
23 redacted manuscript back. It's approved, you know,
24 in my experience, generally approved for public
25 release as amended and you can publish that one if

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1 you want to. That's when you hit that decision
2 point of, you know, looking at, you know, what was
3 redacted. And then the author obviously has the
4 chance of, you know, accepting redactions,
5 proposing -- or appealing. And then during that
6 appeal you can propose rewrites, you can challenge
7 the basis for, you know, a redaction itself, you
8 know, asking for the redaction to be lifted, you
9 know, or really however you want to do it.
10 I will say the appeal process is a little
11 more amorphous and nonspecific, you know, in terms of
12 how it happens. What is specific is you've got 60
13 days from the time that you get that initial
14 manuscript to file an appeal or you're barred from
15 being able to appeal it. So that's generally how
16 their process runs. And, you know, that's -- the
17 appeal process is -- again, you don't have
18 visibility over it, but depending on what you're
19 appealing, it may or may not have to go back to
20 everybody that looked at the initial one. You know,
21 it's more of a rifle shot at that point rather than
22 a broad, you know, broad approach, so --
23 Q. And when you mention amorphous, it's
24 amorphous in the sense that the -- during the appeal
25 process the OPSR or OSR --

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1 A. Either one, same place.
2 Q. The OSR could decide to send the book to
3 various agencies and there's no control over when,
4 if and when it gets a response? Is that fair to say
5 or --
6 A. No, that's not what I mean by amorphous.
7 By amorphous meaning that there's not a definitive,
8 you know, if you want to challenge this, do it this
9 way; if you want to challenge that, do it that way.
10 It's more of a, you know, depending on how you want
11 to challenge it because there can't be discussions
12 about particular redactions. They won't discuss
13 that with you because OSR has to treat this -- they
14 have to treat it as a classified situation to begin
15 with.
16 So, you know, they will -- my
17 understanding and experience has been that they will
18 always do this on, you know, I believe they do it on
19 a, you know, classified system whether it's SIPRNet
20 or whatever system they decide to use. It's a
21 closed type of thing. So you won't have a
22 conversation where they say, hey, this agency wants
23 to, you know, doesn't like the way you said this,
24 they want this or whatever. You don't have that
25 kind of interchange because that would be a

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1 classified conversation and they're not going to do
2 that with, you know, with a submitter.
3 So that's why I say -- when I say amorphous
4 about the appeal process, it's amorphous in that
5 other than having the right to appeal, you're not
6 told exactly how to appeal certain things. And
7 frankly, the reason for that is that you don't know
8 why they redacted something and why they didn't or
9 why they, you know, didn't redact something else or
10 that kind of thing. So you have to assert your
11 arguments that way. That's really the art of trying
12 to, you know, gain more of the text for the book,
13 you know. So that's what I mean by amorphous.
14 Q. If we leave a space in the transcript,
15 would you be able to fill in, and we'll call it
16 books 1 and 2, the dates that books 1 and 2 after No
17 Hero were submitted to the DOPSR and when they were
18 finally in a position to be published, having gone
19 through the process of appeals and the review
20 process? Would you be able to fill in those dates?
21 MR. TOBEY: Do you mean the first date
22 when you get the preliminary response by the DOPSR
23 or the date when everybody said we're good with
24 this?
25 MR. FURMAN: The latter.

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1 MR. TOBEY: The latter?
2 MR. FURMAN: When everyone says they're
3 good with it.
4 Information Requested: _____
5 _____
6 BY MR. FURMAN:
7 Q. So I don't need the blow-by-blow. What
8 I'm asking for is when the book, books 1 and 2 were
9 submitted to the DOPSR and when it was finally
10 through the review process and all the various
11 appeals and when it was deemed ready to be
12 published. I take it that neither book has been
13 released. Is that correct?
14 A. That's correct. I mean, to answer your
15 question, I don't mind giving general parameters.
16 If I'm going to give more specifics, I would need to
17 check with those clients to make sure. Even though
18 I'm not going to specify who they are, they're -- it
19 wouldn't be too hard to figure out, you know. You
20 know, if -- so just I would like to get their
21 permission to be able to --
22 Q. That's fair enough.
23 A. -- to release that information.
24 Q. And if it becomes an issue, you can let
25 Mr. Tobey know and we can resolve that issue if we

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1 need to with the court.
2 A. Okay.
3 Q. And I'll close the door on my questions
4 about books 1 and 2, but were either one of them a
5 firsthand account of a military operation?
6 A. Yes. Both of them were.
7 Q. We're going to take a break for Karen's
8 sake. She's been working very diligently for the
9 past hour and some, but just a few more questions.
10 To the best of your knowledge, have there
11 been any other firsthand accounts published directly
12 by an operator in connection with Operation Neptune
13 Spear other than Mr. Bissonnette's book No Easy Day?
14 A. I'm sorry. Can you read back the
15 question, please?
16 MR. FURMAN: I don't know if I can restate
17 it.
18 THE REPORTER: Question: "To the best of
19 your knowledge, have there been any other firsthand
20 accounts published directly by an operator in
21 connection with Operation Neptune Spear other than
22 Mr. Bissonnette's book No Easy Day?"
23 A. Specifically about Neptune Spear, I'm
24 trying to remember the name of the guy. It's -- I
25 believe it's the last name Mann. I believe he has a

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1 book that includes his involvement. And I may have
2 his name wrong. But I believe there are a couple of
3 other NAVSPECWARCOM or SEALs that were involved in
4 that operation that have written on it.
5 I'm certainly aware of, you know, the
6 operation being written about by Secretary Gates and
7 Secretary Panetta and General McChrystal and people
8 at that level.
9 BY MR. FURMAN:
10 Q. I understand that other people that were
11 involved with Operation Neptune Spear have written
12 the various accounts about it, but what I'm
13 referring to is operators that were on the ground in
14 Abbottabad.
15 A. Abbottabad.
16 Q. I don't know if I --
17 A. I know what you mean.
18 Q. That were on the ground in Abbottabad. I
19 forgot my question.
20 MR. FURMAN: Can I have it read back,
21 Karen, just so I can try to polish that up?
22 THE REPORTER: Question: "I understand
23 that other people that were involved with Operation
24 Neptune Spear have written the various accounts
25 about it, but what I'm referring to is operators

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1 that were on the ground in Abbottabad."
2 MR. FURMAN: And you can put a question
3 mark at the end of it, Abbottabad, yeah.
4 A. Again, I believe that there are operators
5 that were involved in it that have written. I'm
6 aware that an individual who goes by the name
7 Robert O'Neill has written and spoken fairly
8 extensively about his involvement.
9 But again, I don't -- and it's not
10 something that I necessarily would know. There very
11 likely could be books out there that -- I mean, I
12 don't peruse every book that comes out, obviously,
13 and have the time to do that, but my general
14 understanding is there are other -- I'd be surprised
15 if there aren't other operators that have at some
16 point written that.
17 But other than Rob O'Neill -- and again, I
18 said the name. I think it's -- I think Mann is the
19 last name. And I'm not sure if Howard Wasdin's book
20 included any of that. So those could include it and
21 I'm not aware of it because I haven't read those
22 books, but I know those were guys in that same unit.
23 BY MR. FURMAN:
24 Q. I just have a few follow-up questions,
25 then we'll take a quick break.

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1 In connection with the DOPSR process when
2 you represent a client, is that something you would
3 consider to be a specialized area of law or a
4 particular area of law?
5 A. I would say it's specialized, you know, in
6 the way, same way that regulatory, you know, matters
7 are specialized. you know, but it's a fairly narrow
8 area too, so there are not a lot of people that
9 exclusively do that.
10 As I said, it's dealing with different
11 government agencies to resolve, you know, regulatory
12 issues and run through regulatory processes.
13 It's -- whether that's considered specialized, I
14 assume. I consider international trade to be, you
15 know, kind of a specialty niche practice, so I would
16 consider it probably a subset of that, in my
17 context.
18 Q. Do you need to have any kind of particular
19 training or background in order to represent a
20 client as a lawyer before the DOPSR?
21 A. No. There's no special certification or,
22 you know, or requirement that's out there that I'm
23 aware of.
24 Q. Do you need to have any kind of security
25 clearance in order to represent a military author

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1 who is writing a firsthand account of a military
2 operation?
3 A. There's no requirement for that.
4 Q. What if you have a suspicion or a
5 reasonable basis to believe that the information
6 that's in the manuscript has classified information?
7 What does a lawyer do at that point?
8 A. Well, there's obviously not a procedure as
9 to what a lawyer would do. I think that's up to the
10 individual lawyer as to how he would react to that.
11 So I can't speak to others, you know. I can tell
12 you that, you know -- would you like me to answer
13 that for how I would deal with it or --
14 Q. Yes.
15 A. When I will take a, you know, engagement
16 for a former service member, I mean, the starting
17 point obviously is to look at what they've signed,
18 what their obligations are with regard to their
19 clearance and their access and everything like that
20 so that we know, you know, can pinpoint exactly what
21 their responsibilities are to the government.
22 Then when I would go through it, I would
23 be looking for things that, you know, what I might
24 think would be sensitive. And I can tell you that
25 because at the end of the day it doesn't really

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1 matter what the attorney thinks is -- would be
2 deemed classified or not. It's helpful because it
3 shows you how to drill down on certain areas that
4 could be problems, but at the end of the day it's
5 the reviewing components the DOPSR sends the
6 manuscripts to. It's their opinion that matters
7 exclusively, you know, subject to the appeal
8 process, I would say.
9 And I think that's why there's not a
10 requirement that you take this to someone who has
11 that clearance. It's obviously helpful in a
12 pragmatic sense and I think it might give the
13 government a little bit of credit or a little bit of
14 comfort, I should say, not credit, but I've never
15 heard that from the government. That's just my, you
16 know, presumption.
17 So I would be looking for things that if
18 they are, you know, if they're sensitive. You know,
19 and in all of my experiences, the authors, you know,
20 are not trying to push the envelope. They're not
21 trying to, you know, say something they know they
22 shouldn't say or anything like that. So it's
23 usually more of an analysis of, you know, just based
24 on experience, their -- this is going to come close
25 to the line, you know, if you can rewrite this or if

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1 there's a way to soften this or that or something
2 like that. That has been done on occasion just to
3 try to make something more likely to, you know, to
4 not get redacted during the process. But again,
5 it's an inexact science.
6 Q. So I'd asked you what does a lawyer need
7 to do when representing an author in connection with
8 a firsthand account of a military operation, and I
9 think -- and I'm going to just highlight two areas.
10 You said first confirm what agreements he signed.
11 Is that job number one?
12 A. Correct.
13 Q. And then job number two would be to look
14 for things that you feel that could be sensitive in
15 reviewing the manuscript.
16 A. I would call the latter, I would call that
17 job number three, and actually job number two is
18 determine, you know, based on your review at step
19 one of the agreements that they've signed what are
20 their obligations to the U.S. Government. I mean, I
21 think that's -- that's important.
22 And I'll give an example as to why, and
23 that is that if someone has just signed a classified
24 information nondisclosure agreement as opposed to
25 that plus a sensitive compartmented information

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1 nondisclosure statement, that's going to be two
2 different worlds, you know, in terms of, you know,
3 potentially, from their obligations because one
4 carries, you know, much, you know, a much heavier
5 burden, understandably, as to, you know, as to what
6 your obligations to the government would be.
7 So I would have to have -- I would want
8 to, before getting to what I'll call step three,
9 what I think you've just called step two, before
10 getting to that, I would want to make sure I knew
11 what their obligations are and therefore the
12 parameters that the U.S. Government would be, you
13 know, would be evaluating their submission.
14 And then, yes, correct, I would then look
15 for areas that I would think might create concerns,
16 draw attention or, you know, create a problem during
17 the review process.
18 Q. And if I understand in your answer in
19 connection with the second point, which is once you
20 get a handle on those obligations, you would have to
21 examine them because you said that there's a
22 difference between, for example, signing a CINA as
23 opposed to an SCI nondisclosure agreement.
24 A. Right.
25 MR. FURMAN: So why don't we just take a

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1 quick break and give Karen's fingers a little bit of
2 a break and then we'll resume. Is that all right?
3 MR. TOBEY: Yeah, let's do that. And what
4 we'll do is bring in lunch for those who want it in,
5 say, an hour.
6 (Recess from 11:52 to 12:26)
7 BY MR. FURMAN:
8 Q. Mr. Enslen, I just want to follow up on a
9 couple of questions before I go into a new area.
10 Other than Mr. Johnston and Mr. Tobey, have you
11 spoken to other lawyers about the Bissonnette versus
12 Podlaski matter?
13 A. The only other lawyer that I can think of
14 would be within my own firm. Is that --
15 Q. I won't ask you about that. Is that
16 Mr. Kitchen?
17 A. Yes.
18 Q. To the best of your knowledge, is he a
19 witness in this particular case?
20 A. No.
21 Q. Have you spoken to Mr. Mark Zaid, Z-A-I-D?
22 A. I have not.
23 Q. And when I say spoken, I mean communicated
24 any way, e-mail, fax --
25 A. No.

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1 Q. -- or otherwise verbal communications.
2 Have you spoken to an expert whose last name is
3 Slottje, and I'll spell it, S-L-O-T-T-J-I-E?
4 A. I have not.
5 Q. Have you spoken to -- he's not a lawyer
6 but a witness -- Ben Sevier?
7 A. I have not spoken to Ben Sevier about this
8 matter at all. I did have conversations with Ben
9 about No Hero when we were going through that
10 process.
11 Q. So you didn't have conversations with
12 Mr. Sevier about the lawsuit involving No Easy Day?
13 A. No, I did not.
14 Q. And when I say the lawsuit, I'm meaning
15 this particular lawsuit --
16 A. This matter.
17 Q. -- that you're testifying in connection
18 with.
19 How about Elyse Cheney, have you spoken to
20 her about this case?
21 A. No, I have not.
22 Q. Now, I'm looking at the two books that are
23 in front of you, No Easy Day, Exhibit 132, and
24 No Hero, Exhibit 133.
25 Is it fair to say that No Easy Day, just

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1 in general terms, is a firsthand account of the
2 killing of Osama bin Laden which was comprised in
3 Operation Neptune Spear?
4 A. I think it's fair to say that's the
5 predominant operation that's discussed in there.
6 There are obviously other issues that -- other
7 background of Mark Owen that I recall from it, but
8 the gist.
9 Q. And is No Hero a different book?
10 A. Yes, in that it's a leadership book but
11 drawn on many of the same -- many of the same
12 parallels from No Easy Day. But, yes, it's a
13 predominantly, I would call it, a leadership book.
14 Q. Does No Hero describe in detail any
15 specific operations?
16 A. I do believe there are -- there are
17 anecdotes, operational anecdotes in there. It
18 doesn't purport, you know, soup to nuts to cover any
19 particular, you know, operation. But much of the
20 same subject matter is covered.
21 Q. What would you describe as being different
22 about No Hero as opposed to No Easy Day?
23 A. Well, as I said, I think it's an evolution
24 of a story obviously that Mr. Bissonnette wants to
25 tell about to relate his experiences from his

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1 service as a, you know, as a SEAL and then as a
2 Dev group member and apply it to -- allow other
3 people to apply it to their lives.
4 So in that evolutionary sense, No Hero
5 is -- you know, that's why I keep calling it a
6 leadership book. Just the way it's organized is,
7 you know, leadership principles and then operational
8 anecdotes, you know, tied to that.
9 Q. Now, with No Hero, was the book submitted
10 for a prepublication review?
11 A. Yes.
12 Q. Did you review the manuscript before it
13 was submitted for a prepublication review?
14 A. Yes.
15 Q. Did you obtain any kind of security
16 clearance in order to review the book prior?
17 A. I did not, no.
18 Q. Did you --
19 A. I will say this.
20 Q. Did you believe it was necessary?
21 A. No, I did not. But part of that, part of
22 the reason, one, it's not required. Two, I did
23 hold -- I was holding a TS/SCI at the time. Again,
24 that's, you know, not a requirement, but that's, you
25 know, another thing that, you know, as I mentioned

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1 earlier I think in my testimony is that it's
2 something that while it's not going to change the
3 way that OSR deals with you, it probably does
4 provide a little bit of comfort on the front end to
5 have somebody that's, you know, that is holding a
6 clearance that, you know, does have a clearance to
7 be able to look at it. But again, it's not a
8 requirement.

9 Q. Was there any material in No Hero, to the
10 best of your knowledge, that was classified
11 information?

12 A. No.

13 Q. How would you know that?

14 A. Well, that's what I -- again, with what I
15 said before, in my view there wouldn't be anything,
16 but that really doesn't matter because I'm not the
17 reviewer of it. There were -- just like with any
18 book that I've looked at, there are areas where you
19 could tell that there might be some concerns about
20 it, just -- or it might be closer to a concern.

21 And I will say that that is part of the
22 pre-review process that I think a, you know, an
23 attorney that's assisting or anybody that's
24 assisting somebody in submitting a manuscript is
25 going to do, going to look at it and see this is

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1 likely to be a problem, because in some cases things
2 can be rewritten or smoothed out. If someone has
3 not ever submitted a manuscript for prepublication
4 review, if it's the first time for an author doing
5 that, they're not going to be aware of, you know,
6 certain things or may not be aware of certain things
7 that could cause the government more concern.

8 But again, as I mentioned earlier, there
9 are so many variables in the process of the review,
10 you don't know which reviewing components it's going
11 to or what, you know, what the exact parameters of
12 analysis are going to be from there in, so it's, you
13 know, it's really just a preliminary type of thing.

14 I've never had a situation where something jumped
15 out at me as being so, you know, clearly problematic
16 that it had to be redacted before you ever submitted
17 it.

18 Q. When did you -- you don't have to give me
19 an exact date. I'd just like to know the month and
20 the year that you submitted the book No Hero for a
21 prepublication review.

22 A. January 2014.

23 Q. And if you had to check your records,
24 could you specify the date that you submitted the
25 book for a review?

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1 A. Yes.

2 Q. Okay.

3 A. It was early -- it was -- I want to say it
4 was like the 7th, 8th or 9th, maybe the 6th. It was
5 somewhere within that first full week of January, as
6 I recall.

7 Q. Who did you hear back from? Or let me
8 strike that.

9 When did you hear back from the DOPSR in
10 relation to No Hero?

11 A. Well, actually it was first submitted to
12 USSOCOM. As I believe I mentioned earlier, there
13 was a little bit of a discrepancy or at least enough
14 of a gray area in my view of exactly who the --
15 where the entry point was going to be for this book
16 based upon the guidelines, you know, that existed
17 coming from DOPSR.

18 So the two candidates for submission
19 obviously were USSOCOM or straight DOPSR. I think I
20 mentioned earlier that my initial call was to
21 Mr. Wally King at DOPSR who confirmed for me that,
22 yes, go ahead and submit it to, you know, to the
23 component first, so which means SOCOM. Then later
24 that got amended somewhat to say go ahead and send
25 it to us as well. So they both got it.

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1 So who I heard from first, to answer your
2 question, I'm sure I heard from the USSOCOM public
3 affairs officer acknowledging receipt.

4 Q. Did SOCOM then advise you one way or the
5 other about any redactions or concerns they had in
6 connection with the book?

7 A. My recollection is that SOCOM, you know,
8 immediately or close to the time, within days,
9 realized that it was going to DOPSR as well and
10 therefore they backed off and then just assumed that
11 they were going to receive it, as they did, in due
12 course from DOPSR.

13 So there was no -- no substantive comment
14 back from SOCOM other than the fact that I recall
15 the PAO saying that they've, you know, they had a
16 high volume of, you know, high volume of books to
17 review.

18 Q. Did you get a substantive response from
19 DOPSR?

20 A. Yes, as soon as we submitted it to DOPSR,
21 which was within a couple of days of the time it
22 went to SOCOM, so it was still early January, and
23 then started the process of discussions with them.

24 The first step for them is for themselves
25 to review, you know, the book to determine, you

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1 know, I'm assuming, among other things, probably
2 what reviewing components need to see this and what
3 portions do they need to see. So that's not an
4 instantaneous process, obviously, for DOPSR to do.
5 So I did hear back from DOPSR that they
6 had it. There's always an issue as to how many
7 copies did they need, you know, whether it's hard
8 copy or on a disk. That's kind of a -- you know,
9 sometimes that will change based upon how they're
10 going to do the review, who's going to do the
11 review. At least in my experience it sometimes
12 changes. So most of the response back initially
13 from DOPSR I will say was more administrative.
14 There -- I will say there was an
15 acknowledgment from DOPSR in a conversation, a phone
16 conversation, where, I mean, they knew that this was
17 the same author that was involved in, you know, that
18 had written No Easy Day. So that connection, you
19 know, while it was not made in the submission cover
20 letter, you know, that we sent, they certainly knew
21 it immediately. So that was the -- that was the
22 first feedback we got.
23 Q. When did you hear substantively one way or
24 the other from the DOPSR?
25 A. And when you say that, do you mean when

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1 did they send back an approved manuscript?
2 Q. Or an edited, any kind of substantive
3 comment on the manuscript.
4 A. Well, it's a continual process. Once they
5 get it, obviously we don't just, you know, wait to
6 hear from them. We try to be proactive, and I think
7 that's what you have to do because you have to keep
8 it in front of them because they're -- again, they
9 have a lot of tasks.
10 And so I would have frequent
11 conversations. Now, they weren't long and they
12 weren't necessarily substantive, but it was usually
13 on status, you know, where is it at, where is it at,
14 is it moving forward, things like that, because, you
15 know, common sense told us that it could lag, you
16 know, if not, you know, if not encouraged to be
17 distributed, potentially. So we didn't want to take
18 that risk.
19 And so there was a -- again, I can't come
20 up with a number as to how many conversations there
21 were, but, you know, definitely every week,
22 sometimes multiple times a week when it was at
23 stages of, you know, being initially evaluated.
24 And then once it was -- I remember getting
25 the word from DOPSR that, okay, it has been

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1 distributed to the reviewing components, and
2 that's -- that's more of a, okay, it's made it
3 through that next gate. So now you know it's in the
4 hands of the reviewing components, and so at that
5 point the question for OSR is, if you can get them
6 to tell you, is what's your internal suspense to get
7 it back from those reviewing components.
8 And again, I'm just trying to -- because
9 there's expectation management going on. Obviously
10 the publisher is interested in, you know,
11 everything's time sensitive to them. And so I
12 believe that everybody knows the guidelines that OSR
13 is trying to meet, and so it's just trying to
14 constantly have kind of a Sit Rep, as we would say,
15 in terms of what the status is.
16 Q. I appreciate your response, but my
17 question to you is, when did you hear back from the
18 DOPSR?
19 A. Probably within 48 hours of the time that
20 I sent them the first -- the submission, I heard
21 back from them that they had it.
22 Q. What I mean is, I'm not asking about the
23 administrative acknowledgment. That's obvious. But
24 the -- when you heard back from the DOPSR after the
25 various reviewing components had completed their

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1 review.
2 A. After the final one had come in and DOPSR
3 was then -- and I'm not trying to, you know, play
4 games with you here. I just want to make sure that
5 the process -- let me say this about the process,
6 and then I will answer your question.
7 Once the -- all of the reviewing
8 components get, you know, give their responses back
9 to DOPSR, they then go through a process of, you
10 know, of deconflicting, of seeing if they agree with
11 the redactions, if, you know -- and again, they
12 don't clue you in on that. I know that's what
13 they're doing. So that takes awhile. It's not like
14 they just get a response back and say here it is.
15 They go through that process as well, which they're
16 usually trying to get that done within a week or so.
17 So I would say that I probably heard back
18 from them and my recollection is late March maybe,
19 toward the end of March.
20 Q. That's the March of -- late March of 2014?
21 A. Correct.
22 Q. And what substantively did -- information
23 did you receive from DOPSR about the manuscript that
24 was submitted?
25 A. At that time I was told that we've gotten

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1 all the responses back, we are going through our
2 process of synthesizing it, and once we have a
3 completed manuscript, redacted manuscript, then it
4 will have to go through the approval chains here for
5 release and then we'll be sending it to you.
6 And so, as I mentioned before, we were
7 obviously in contact with them during that interim
8 period to make sure that that process continues to
9 move along as quickly as possible.
10 And then my recollection is that it was
11 sometime in early April, maybe the 7th of April. I
12 believe we provided documents that would have that
13 in there. We could -- but my recollection is
14 sometime early April that we got the, you know,
15 approved-as-amended manuscript back from DOPSR.
16 Q. And the manuscript that you received back
17 that was reviewed by the DOPSR and I take it to the
18 best of your knowledge one or several reviewing
19 components, was that the form in which that book was
20 published, or was there an appeal process?
21 A. The author elected to file an appeal, so
22 that was not the form that it was -- that was
23 published.
24 Q. When did that appeal take place? You
25 don't have to give me the exact date, but I'd like

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1 to know, to the best of your knowledge, when that
2 appeal was made.
3 A. My recollection is that it was filed
4 sometime mid-May of 2014. And the reason for the
5 delay, that's probably the most labor intensive time
6 from the attorney's side, frankly, in processing an
7 appeal is, as I think I mentioned earlier, the way
8 the process works, you're not really sure why
9 something was redacted. So if you want to challenge
10 a redaction, you have to be fairly artful in trying
11 to predict what a problem might be and then come up
12 with a potential solution for that. So I recall
13 that that always takes a while to put together.
14 So I may be off a little bit, but those
15 are the months I'm confident about. And so it was
16 resubmitted, you know, the appeal was submitted, I
17 should say, sometime in May of 2014.
18 Q. Do you have a copy of the manuscript that
19 you and the author received as amended in early
20 April?
21 MR. TOBEY: I think wasn't the decision
22 made to withhold that on the basis that there was --
23 THE WITNESS: The --
24 MR. TOBEY: -- that it was confidential?
25 BY MR. FURMAN:

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1 Q. I'm not asking you about the objection. I
2 just want to know that you have it.
3 A. Yes.
4 MR. FURMAN: Okay. If there is an
5 objection, we'll deal with it. I'm going to ask
6 Karen to put at the end of the transcript a request
7 for the production of the manuscript of No Hero that
8 was received in early April that was approved by the
9 DOPSR as amended pursuant to its review. And I
10 understand that there may be an objection. We'll
11 deal with the objection off the record --
12 MR. TOBEY: Sure.
13 MR. FURMAN: -- just so we can move on.
14 BY MR. FURMAN:
15 Q. You mentioned earlier, Mr. Enslen, that
16 there were various reviewing components. Do you
17 know what components reviewed No Hero?
18 A. I don't know for certain because that's --
19 that's not officially shared.
20 Q. Okay. I just want to know if you know.
21 So it's not -- you would have no way of knowing one
22 way or the other?
23 A. I know there were six. They told there
24 were six components that it went to.
25 Q. Do you know who they are?

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1 A. I know ones that it would normally go to.
2 I'm positive that it went to SOCOM. The joint staff
3 will normally look at that. If there are any other
4 governmental agencies that are involved in the
5 subject of the manuscript, typically they're going
6 to get it. So the, you know, potential service
7 components sometimes will get it. You know, in
8 other words, a service component that the author
9 belonged to ultimately, even if they predominantly
10 operationally belonged to a command as in this case.
11 So all I know is there were six. And I
12 can predict just from having worked in that space
13 where they went. Occasionally you will -- you might
14 hear somebody at OSR say we're still waiting on a
15 response from so-and-so. And that's, you know,
16 that's not them officially telling you that.
17 They're just trying to tell you where the hangup is,
18 frankly. But I do know there were six for No Hero
19 that were looked at.
20 Q. Now, the appeal itself, was that done in
21 writing?
22 A. Yes.
23 MR. FURMAN: And I appreciate that there
24 may be objections, but I'm going to call for the
25 production of that appeal that was filed in mid-May

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1 of 2014. And I appreciate that there will be
2 objections to it. I'm going to call for the
3 production of it, and of course I'll follow up in
4 writing.
5 And also, if we leave a space in the
6 transcript, could you also fill in the date of that
7 appeal? Regardless of whether or not we succeed in
8 obtaining the production of that appeal. So I'll
9 ask to fill in that date.
10 Information Requested: _____
11 BY MR. FURMAN:
12 Q. Now, in terms of that appeal of the --
13 I'll call it the first draft that you received from
14 the DOPSR, when did you hear back on that appeal?
15 A. Again, I'm assuming you mean when did we
16 get the results back?
17 Q. Yes.
18 A. My recollection is it was August of 2014.
19 Q. Now, let me just walk you backwards. The
20 appeal was made in mid-May of 2014. Does the DOPSR
21 or any agency respond and offer you some kind of
22 reply or counterargument to your appeal?
23 A. Yes. They will -- in a similar fashion to
24 how they provide you after the initial submission
25 with an approved-as-amended manuscript or approved

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1 as recommended, with recommendations, whatever
2 they're going to provide you back, they'll do the
3 same thing with an appeal. And it typically comes
4 in the form of a letter that is itemized by appeal
5 number and -- or the item numbers in the appeal,
6 because obviously there are some security concerns
7 about the appeal document itself which, because it's
8 challenging redactions itself, is obviously going to
9 be much more sensitive than the original manuscript
10 was. And so therefore, you know, document control
11 and access and things like that are paramount with
12 those documents.
13 So they will send you back essentially
14 that letter that I just described with, you know, an
15 itemized account of, you know, stands by original
16 appeal or, I'm sorry, stands by original redaction,
17 indicating that essentially you lost on that
18 challenge, or they will say alternative language
19 accepted or, you know, redaction withdrawn if you
20 won outright or, you know, anything in the interim.
21 So it'll have you a detailed account of
22 what your results are, but it doesn't spell out this
23 is why we, you know, redacted this or this is why
24 we, you know, we're agreeing with your argument.
25 No explanation is given. And then, in addition, you

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1 will receive a -- essentially a new
2 approved-as-amended manuscript.
3 Q. Now, in connection -- I'm asking you
4 specifically as to No Easy Day. Was that letter --
5 MR. TOBEY: You mean No Hero?
6 MR. FURMAN: I'm sorry. I meant No Hero.
7 BY MR. FURMAN:
8 Q. I'm asking you specifically with respect
9 to No Hero. I actually did point to No Hero when I
10 uttered the name of the other book. Let me start
11 with a new question.
12 Specifically with respect to No Easy Day,
13 when did you receive that letter with an itemized
14 response to the appeal?
15 MR. TOBEY: You meant No Hero again.
16 MR. FURMAN: And I meant No Hero again.
17 So let me strike that.
18 BY MR. FURMAN:
19 Q. When did you receive a letter with an
20 itemized response to the appeal in connection with
21 No Hero?
22 A. Again, my recollection is that it was
23 sometime in August of 2014.
24 Q. And do you have a copy of that, that
25 letter?

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1 A. Yes.
2 Q. Okay. I'm also going to call for
3 production of that letter. I take it the letter is
4 from the DOPSR?
5 A. Yes.
6 Q. And that letter will identify as the
7 response letter which itemized the response to the
8 appeal made in mid-May of 2014 in respect of the
9 first review of No Hero by the DOPSR and the
10 reviewing components.
11 Mr. Enslen, was the manuscript altered in
12 any particular, significant way in response in
13 August of 2014 by the DOPSR following your appeal?
14 A. The results of the appeal were we
15 challenged, as I recall, 127 redactions. And we
16 won, at least I say won, whether outright or with
17 alternative language, somewhere close to a hundred
18 of those, if that gives you any kind of indication.
19 So there were still, as you can see from
20 the book, there were still a number of redactions,
21 you know, that were in there. And again, some of
22 the redactions the author accepts because, you know,
23 while you can challenge everything, Mr. Bissonnette
24 did not challenge everything. He accepted, you
25 know, a number of the redactions. So what remains

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1 then in the -- now what you see in the book reflects
2 the redactions that were either accepted or that we
3 lost in the appeal.
4 Q. So, in other words, there was never
5 another round of appeals after the May appeal and
6 the August response --
7 A. That is correct.
8 Q. -- of 2014?
9 A. I'm sorry. I didn't mean to talk over
10 you.
11 Q. Now, in connection with No Easy Day, now
12 I'm turning your attention to No Easy Day. If the
13 book was submitted for a prepublication review, do
14 you know which reviewing components, as you
15 described it, would have reviewed the manuscript?
16 A. I have no way of knowing for sure. My
17 educated assumption is it would have been the same
18 reviewing components. In my experience, those are
19 generally determined by the author's experience and
20 where he was assigned and, you know, I would expect
21 them to be the same for that reason.
22 Q. In connection with No Easy Day, do you
23 have an understanding one way or the other as to
24 whether the CIA would have been one of the reviewing
25 components?

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1 A. I don't have any way of knowing, you know,
2 if they would. Typically, if an organization is,
3 you know, is mentioned in the book, which I know
4 from having read No Easy Day that that is the case
5 and I know from having worked on No Hero that is the
6 case, I think it -- my guess would be that they
7 probably would, but I don't know that.
8 Q. Other than speculation on your part, do
9 you have any basis to know what sections of No Easy
10 Day would have been redacted one way or the other if
11 it had been submitted for a prepublication review?
12 A. Well, I would assume that the -- had it
13 been submitted for prepublication review, while
14 there could have been and likely would have been
15 some redactions here and there, I would not have
16 expected there to be too many of them given the
17 number of other publications, you know, that
18 discussed particularly the main mission discussed in
19 that book.
20 Q. Now, you had mentioned that in connection
21 with the book No Hero that there were 127 redactions
22 that were made, some of which remain, and there are
23 paragraphs of No Hero that are redacted.
24 Do you think that there would have been
25 less redactions in No Easy Day than there were in No

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1 Hero?
2 A. Well, let me clarify one thing. I said
3 that we challenged approximately 127 redactions.
4 There were more than 127 redactions in No Hero. And
5 I will say that had No Easy Day been submitted for a
6 prepublication security review, I would not have
7 expected there to be anywhere near as many
8 redactions in No Hero as we got. I can say that.
9 Because I saw the effects that the, you know, all of
10 the problems caused by No Easy Day created for the
11 situation we were dealing with, you know, in No Hero
12 as much as --
13 Q. I understand your answer, but it's not
14 answering my question. My question is about No Easy
15 Day. And so let me ask the reporter if she could
16 repeat the question, and then if you can answer it,
17 we'll move on. If not, I can rephrase the question.
18 A. Okay.
19 THE REPORTER: Question: "Now, you had
20 mentioned that in connection with the book No Hero
21 that there were 127 redactions that were made, some
22 of which remain, and there are paragraphs of No Hero
23 that are redacted. Do you think that there would
24 have been less redactions in No Easy Day than there
25 were in No Hero?"

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1 A. Assuming that No Easy Day was submitted
2 for prepublication security review, I would have
3 expected there to be fewer redactions in No Easy Day
4 than we received in No Hero.
5 BY MR. FURMAN:
6 Q. Now, do you know whether or not there is
7 any classified information in No Easy Day?
8 A. I do not know whether there is classified
9 information in there or not because, again, I'm not
10 the reviewing component or the classification
11 authority, so --
12 Q. Is it fair to say, and if it's not, just
13 let me know, that you would have to be read into the
14 special access program that formed a part of
15 Operation Neptune Spear in order to understand
16 whether or not there is classified information in
17 No Easy Day about Operation Neptune Spear?
18 A. Not necessarily.
19 Q. And why do you say that?
20 A. Well, because that assumes that the
21 Operation Neptune Spear had a different special
22 access program, or it suggests that to me, to which
23 it may or it may not have.
24 But I will say that -- well, I don't want
25 to convolute the record any more, but really you

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1 have to be the classification authority to determine
2 if it's classified information or not.
3 Q. Do you know whether or not Operation
4 Neptune Spear was a classified operation? Was it --
5 A. What do you mean by classified operation?
6 Q. Was it a top secret operation, to the best
7 of your knowledge?
8 A. I've never heard an operation necessarily
9 portrayed that way, and I've been on plenty of
10 operations myself. So, I mean, I'm not trying to
11 play games with you. It's just that's not the
12 context with which -- I mean, certainly it was a
13 sensitive operation and no doubt it involved, you
14 know, I would assume, multiple programs as most
15 operations do, frankly. What in particular they
16 were, I don't know. I wasn't involved in the
17 operation.
18 But, yes, certainly a sensitive operation.
19 Whether I'd say, hey, you know -- again, I've never
20 thought of an operation, including those that I've
21 been on, in the terms of, oh, that's a top secret
22 operation or that's -- there are different
23 parameters of every mission and every operation that
24 are more sensitive than others, so I'm really not --
25 I'm not able to put a blanket, you know,

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1 classification over an operation, particularly not
2 one that I was, you know, did not participate in.
3 Q. Now, you referenced that details of
4 Operation Neptune Spear were already in the public
5 domain prior to the publication of No Easy Day. Is
6 that fair to say?
7 A. I don't believe I said that I knew that
8 they were in prior to the publication of No Easy Day
9 because, as I've mentioned before, I read No Easy
10 Day as a private citizen in the course of time. I
11 really hadn't done that analysis. I know that the
12 details from Operation Neptune Spear that we have,
13 you know, researched and looked for government --
14 government pronouncements on. I'm aware of a lot of
15 that. Whether those dates, you know, whether that
16 predates the actual publication of No Easy Day or
17 not, I can't -- I can't tell you. I mean, it's
18 proximate to, I can say that, for some of them. And
19 nor do I remember the exact dates of the other books
20 that I'm aware of that have discussed different
21 aspects of Operation Neptune Spear.
22 Q. There was an article in the magazine The
23 New Yorker written by an author named Nicholas
24 Schmiddle, S-C-H-M-I-D-D-L-E, that had some details
25 about what was taking place both on the ground and

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1 in the White House in connection with the killing of
2 Osama bin Laden.
3 Did you -- were you aware of that article
4 when it was first published in The New Yorker?
5 A. No.
6 Q. Do you believe that the fact that certain
7 details of a classified operation -- I'm sorry. Let
8 me rephrase that.
9 Do you believe that if details of a
10 certain classified operation are discussed in
11 newspapers and in the public that that means that a
12 book about that classified operation by someone who
13 signs a nondisclosure agreement could be published?
14 A. No. The publication, an open source
15 doesn't necessarily -- doesn't change the
16 classification of the information. That's -- that's
17 my view on it.
18 Q. Yeah. In other words, I think we both
19 would agree that a classified -- I'm sorry, that
20 that classified information remains classified
21 information irrespective of whether it's in the
22 public domain or not by other sources.
23 A. I wouldn't totally agree with that because
24 I believe it does matter about the source, because I
25 can tell you that if, for example, you find yourself

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1 in a situation of challenging certain things, for
2 example, on an appeal to DOPSR, you're not going to
3 cite New Yorker magazine articles for support.
4 However, you might cite a speech by Barack
5 Hussein Obama or Vice President Biden or Secretary
6 Panetta or Secretary Gates or something or the
7 Congressional Research Service, you know, that is --
8 so while that's in the public domain, it's the U.S.
9 Government's, you know, pronouncement. So -- and
10 the reason I go into that is that, you know, that's
11 the kind of thing that DOPSR also vets for the U.S.
12 Government before it goes out.
13 So that's why, you know, when you say that
14 it's in the public domain, I think it depends on who
15 put it there as to, you know, as to what value or
16 what importance or, you know, credence you could
17 give it.
18 Q. Would you say that there is a standard of
19 care -- let me take it back.
20 Have you reviewed any documents that
21 relate to my client Kevin Podlaski's representation
22 of Mr. Bissonnette in connection with the
23 publication of No Easy Day?
24 A. I don't believe I have. If I have, I
25 don't recall. Let me -- let me make sure, I'm

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1 sorry, let me make sure I understand your question.
2 You're asking me if I've reviewed any
3 documents relating to Mr. Podlaski's representation
4 of Mr. Bissonnette in connection with No Easy Day.
5 Q. Correct.
6 A. No, not that I recall. I've certainly
7 seen mention of, you know, by looking at the
8 pleadings and things like that, you know, within
9 this lawsuit, but documents relating to, you know,
10 to advice or anything like that -- let me think.
11 Just want to make sure I give you a complete answer.
12 I mean, I have seen in connection with this case
13 some e-mail, some e-mail traffic, but it's only been
14 in the context of preparing for this, you know,
15 deposition or, you know, or this case, nothing that
16 was -- I don't recall seeing anything at the time we
17 were working on No Hero, you know. And I'm sorry.
18 I can't remember the time frame of your question as
19 to whether it was tied to it.
20 Q. At any point in time. I just want to know
21 if you have read Mr. Podlaski's file in connection
22 with his representation of Mr. Bissonnette.
23 A. Wouldn't say I've read the file. I have
24 seen Mr. Podlaski in an e-mail exchange. It seems
25 like it was proximate to the time of the Jeh Johnson

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1 letter that was, I believe, late August 2012. But
2 again, in the context of this -- of this case,
3 not -- I did not review anything like that at the
4 time we were working on No Hero.
5 Q. Have you read Mr. Podlaski's deposition
6 transcript in this matter?
7 A. I have not.
8 Q. Have you read Mr. Bissonnette's deposition
9 transcript in this matter?
10 A. I have not.
11 Q. As of today do you have an opinion one way
12 or the other about Mr. Podlaski's representation of
13 Mr. Bissonnette?
14 A. In what context?
15 Q. In any context.
16 A. I believe that the manuscript for No Easy
17 Day should have been submitted for prepublication
18 security review, so any recommendation to the
19 counter I would disagree with. Again, I haven't
20 pored over all of the documents to see exactly what,
21 you know, what advice was given when, but --
22 Q. Based on what you know today and the
23 documents you've read and that you haven't, do you
24 have an opinion as to whether Mr. Podlaski deviated
25 from the standard of care in representing

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1 Mr. Bissonnette in connection with No Easy Day?
2 A. I have an opinion, yes.
3 Q. What is that opinion?
4 A. My opinion is that Mr. Podlaski should
5 have advised Mr. Bissonnette to submit the
6 manuscript for No Easy Day for prepublication
7 security review to DOD.
8 Q. Now, do you know one way or the other in
9 connection with that opinion as to what
10 Mr. Bissonnette told Mr. Podlaski and what
11 Mr. Podlaski told Mr. Bissonnette about that issue,
12 about the submission of the book for a
13 prepublication review?
14 A. No, I do not.
15 Q. Do you have information one way or the
16 other about what information Mr. Bissonnette told
17 Mr. Podlaski about the nondisclosure agreements he
18 signed in connection with Operation Neptune Spear?
19 A. No, I do not.
20 Q. Do you have any information one way or the
21 other about what information Mr. Bissonnette told
22 Mr. Podlaski about the nondisclosure agreements he
23 signed in general in connection with his service as
24 a Navy SEAL?
25 A. I don't know what Mr. Bissonnette would

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1 have told Mr. Podlaski. My assumption is that
2 Mr. Podlaski would have said, you know, show me
3 your, you know, your read-on, your read-off, your
4 SCI, you know, NDS, your classified information NDA,
5 and then assisted him in determining what his
6 actions should be.
7 So, therefore, really what Mr. Bissonnette
8 told Mr. Podlaski, no, I don't know, nor would it
9 affect what I -- my opinion really, because I think
10 that opinion should be grounded in what the, you
11 know, what the requirements are, particularly in the
12 SCI nondisclosure statement.
13 Q. So you're -- just so I understand your
14 answer, your answer is you don't know what
15 Mr. Bissonnette told Mr. Podlaski about the
16 nondisclosure agreements that he signed in
17 connection with his military career but that it
18 doesn't matter because Mr. Podlaski should have
19 confirmed it or otherwise assisted on it? Is that
20 what your testimony is?
21 A. Well, my assumption is that Mr. Podlaski,
22 his first move would be to look at the, you know,
23 the documents that Mr. Bissonnette executed in
24 connection with his read-on, his read-off, you know.
25 And again, we're talking about the CINA, the SCI

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1 nondisclosure statement, any indoc statements or
2 anything like that, the read-off. That would be the
3 starting point for any kind of representation
4 relating to a book review so that then the documents
5 speak for themselves.
6 And that's why when I say it doesn't
7 matter what, you know, Mr. Bissonnette said to him,
8 I'm just saying that the documents speak for
9 themselves. So that's why to me the standard of
10 care would dictate look at those first and determine
11 what the standard is and then take the obligations
12 from that.
13 Q. Now, do you know one way or the other
14 about Mr. Bissonnette's interest in maintaining
15 secrecy over his work in connection with the
16 preparation and the ultimate publication of the book
17 No Easy Day?
18 A. I'm sorry. Can you read that back?
19 Q. I can rephrase it for you.
20 A. I just want to make sure I've got it.
21 Q. I understand.
22 THE REPORTER: Question: "Now, do you
23 know one way or the other about Mr. Bissonnette's
24 interest in maintaining secrecy over his work in
25 connection with the preparation and the ultimate

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1 publication of the book No Easy Day?"
2 THE WITNESS: I'm sorry. I'm going to ask
3 you to read it back one more time.
4 THE REPORTER: Question: "Now, do you
5 know one way or the other about Mr. Bissonnette's
6 interest in maintaining secrecy over his work in
7 connection with the preparation and the ultimate
8 publication of the book No Easy Day?"
9 MR. TOBEY: Object to the form.
10 A. I would assume that Mr. Bissonnette would
11 be concerned about meeting the obligations of his
12 classified information nondisclosure agreement and
13 his SCI nondisclosure, you know, statement and, you
14 know, the obligations that he had to the government
15 in terms of, you know, meeting those. I think that,
16 you know, Mr. Bissonnette, you know, had no desire
17 to get crosswise with the government and wanted to
18 meet his obligations under that.
19 I mean, my understanding all along is
20 that's frankly why he, you know, he -- I mean,
21 that's certainly why I felt like I was being hired
22 for No Hero was to help him navigate those
23 responsibilities and make sure that he didn't, you
24 know, run into any trouble. So if that -- if that
25 addresses his desire on the --

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1 BY MR. FURMAN:
2 Q. No, I'm asking a different question, so
3 I'm going to rephrase it.
4 A. Okay. Yeah, please rephrase it because I
5 don't understand it.
6 Q. Do you know whether or not Mr. Bissonnette
7 told Mr. Podlaski that he, Mr. Bissonnette, did not
8 want anyone in the military to know that he was
9 preparing to write a book about Operation Neptune
10 Spear?
11 MR. TOBEY: Object to the form.
12 A. No, I don't -- I don't know anything about
13 that.
14 BY MR. FURMAN:
15 Q. Around the time of the publication of
16 No Easy Day going into the late summer, early
17 September of 2012, is that roughly the first time
18 that you learned that the book was being written?
19 A. Yes. I mean, I recall, you know, I think
20 it may have been an e-mail from a SEAL buddy of mine
21 or something like that in Tampa or something.
22 Somewhere in a informal, you know, SOF, all caps,
23 S-O-F, special operations forces network or
24 something like that, you know, I heard buzz about
25 the book. That was the first time I became aware of

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1 it.
2 Q. Can you describe what that buzz was?
3 A. It was just anytime there is a, you know,
4 books that are coming out, which happens frequently
5 within that SOF community, as I said. And again,
6 I'm saying SOF as an acronym, S-O-F, for special
7 operations forces. You know, for example, when
8 Lone Survivor came out, there was buzz about it, you
9 know, there's talk about it. It's something that a
10 lot of people in the community are obviously going
11 to read.
12 So it was something similar to that, but I
13 don't -- I didn't pay special attention to it
14 because -- and again, I wasn't involved in anything
15 at that time. So, you know, it was more in the, you
16 know, the fall of 2013 when I became involved in
17 anticipation of No Hero that I really looked back,
18 frankly went back and read No Easy Day again.
19 Q. Would you consider yourself in the SOF
20 community?
21 A. I would say former SOF since I'm retired
22 now. So, as much as I'd like to say I still am, I'm
23 not. But it's a -- it's a -- as I said before, no
24 surprise, it's a fairly small community when you get
25 right down to it and that likes to stay in touch,

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1 so --

2 Q. Now, would you say that the publication of

3 No Easy Day was controversial within the SOF

4 community?

5 A. At the first time I heard about it, no

6 more so than other books.

7 Q. Well, when you say no more so, what does

8 that mean? You mean that there was controversy?

9 A. I'm trying to remember a book that came

10 out from a SOF operator that didn't create

11 controversy within the community, because in

12 general, and I'm -- this is a gross

13 oversimplification, but just about any book that

14 comes out by anybody, there's going to be a segment

15 of the community that doesn't like it because they

16 don't think anybody should write about it that's

17 from the community.

18 In my experience, there's going to be a

19 segment of that community that, you know, likes the

20 fact that it was written as long as it's not just

21 about self-glorification or something like that.

22 They generally want, you know, one of their own to

23 tell a story. And then there's that group that

24 really could care less. So every book that comes

25 out, whether it's, you know, a household name or

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1 whether it's just the latest one to come out, tends

2 to get that treatment within the community.

3 Q. Were you aware that shortly before the

4 publication of No Easy Day, there was a group of

5 Navy SEALs that actually wrote a piece on the

6 internet that was very condemning of Mr. Bissonnette

7 for writing the book in the first place?

8 A. Are you asking at the time the book came

9 out was I aware of that or -- I'm sorry.

10 Q. Well, did you become aware of it at some

11 point?

12 A. Later I did, once there was obviously a

13 little bit more buzz ultimately about No Easy Day

14 than your standard book, you know, because of the

15 issues that happened with it. But, yes, I'm

16 generally aware. I don't think I've ever read that

17 account that you're talking about, but I know there

18 have been a lot of writings and a lot of opinions

19 thrown around about the subject.

20 Q. Are you aware of there being a rock in

21 the -- at the SEAL headquarters in Virginia Beach

22 that contains the names of certain SEAL members that

23 are no longer considered to be in good standing?

24 A. No, I'm not aware of that.

25 Q. Have you ever heard of that concept?

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1 A. I mean, I've heard of that concept. A lot

2 of units will have that, you know, type of thing.

3 It's usually -- but it's not necessarily the same

4 form. A lot of times it's just more of a -- again,

5 that -- you know, that array of opinions that I said

6 that tend to follow any publication, you know,

7 that's going to exist whether it exists in granite

8 or just in, you know, within the talk and buzz

9 within the community. I mean, that's not uncommon.

10 Q. Do you know one way or the other -- well,

11 let me rephrase that. Have you heard in the SOF

12 community that Mr. Bissonnette has been what's

13 described as, quote, PNG'd, close quote, which I

14 believe stands for persona non grata?

15 A. I've not -- yes, I've heard that, you

16 know, and I think it's been discussed I think in

17 some of the articles and things like that, you know.

18 But it's -- again, it goes back to which one of

19 those little pockets you fall into as to, you know,

20 there's -- I can think of, you know, other guys that

21 I've served with that had the same type of stigma

22 from some people, and others, you know, they do not

23 attach that. So, yes, I've heard in general, but I

24 can't cite to you where I heard it or, you know, a

25 particular article or anything.

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1 Q. And putting aside the contractual

2 obligations that attach, which are obvious, in

3 relation to the SOF community, do you believe that

4 there is a segment there that believe that it's

5 inappropriate for a Navy SEAL to write a book about

6 an operation?

7 A. Well, as I said, yes, there's always a

8 segment within every special operations unit I'm

9 aware of that some people are going to feel that

10 way. And generally, whoever writes is going to be

11 PNG'd to that group. But I've also never seen a

12 situation where there wasn't a counter group to that

13 that -- you know, again, usually -- usually the

14 issue that I've seen that will cause somebody to,

15 you know, get more grief and less acceptance is if,

16 you know, if it's a self, you know, glorification

17 type of thing. But if it's -- again, it's just a

18 matter of opinion.

19 But that segment and the aspect that

20 you're talking about to me is fairly common within

21 the SOF community. It's not unique to, you know,

22 necessarily this situation. You know, you could

23 find it in others just because some people don't

24 want anybody to write about anything, even if they

25 do it the right way, so --

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1 Q. Well, I just -- on this point I want to
2 show you a document that has been marked in this
3 case, just an e-mail. Just wanted to get your take
4 on it. It's Exhibit 27. It's an e-mail from
5 Mr. Bissonnette to Robert Luskin, Christine Ball at
6 Penguin Group, Ben Sevier at Penguin Group,
7 Mr. Ragone, R-A-G-O-N-E, who is a publicist,
8 Mr. Gigante, who is a lawyer at Penguin Group, Elyse
9 Cheney, who is a literary agent, Mark Fabiani, who
10 is a lawyer and also a public relations/crisis
11 manager, and the coauthor of No Easy Day called
12 Kevin Maurer. And that e-mail is dated
13 September 2nd of 2012.
14 In that e-mail Mr. Bissonnette is
15 describing the fact that he -- I'm sorry, he's
16 describing his reaction to being told in December
17 that he was sent home from a trip and he was treated
18 poorly -- I don't want to quote him there -- and
19 that he denies writing the book because of this
20 event. Do you see that?
21 A. Yes.
22 Q. Now, there's a reference there that he
23 spoke with multiple friends at work before he
24 started the book project and every one of them knew
25 he was doing it for the right reasons.

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1 Given that you now know that
2 Mr. Bissonnette signed a nondisclosure agreement,
3 was it appropriate for him to talk to his friends
4 about the book Operation Neptune Spear?
5 MR. TOBEY: Objection. Form.
6 A. When you say nondisclosure agreement, I
7 assume you're referring to his --
8 BY MR. FURMAN:
9 Q. SCI nondisclosure agreement.
10 A. -- SCI nondisclosure agreement? Well, my
11 assumption would be that the friends at work that
12 he's referring to are fellow members of that same
13 unit who, you know, I will also assume signed the
14 exact same SCI nondisclosure statement. But the
15 fact that someone -- but notwithstanding that, the
16 fact that someone is writing a book and just
17 acknowledges the fact that they're writing a book,
18 you know, I don't think that in and of itself, you
19 know, that acknowledgment would be improper or
20 unusual, frankly.
21 Q. Okay. If I can refer you to Exhibit 24.
22 And Exhibit 24 is an e-mail dated August 17th of
23 2012 -- this is before the publication of No Easy
24 Day -- from Mr. Bissonnette to his literary agent,
25 Elyse Cheney. You've had a chance to read it before

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1 today, correct?
2 A. I don't recall seeing this e-mail. If
3 you'd give me a minute.
4 Q. Yeah, if you could just take a moment to
5 read it.
6 A. (Witness complies.) Okay. I've read it.
7 Q. Okay. Now, the -- you mentioned earlier
8 that there's at least one segment of this SOF
9 community that would not be upset if they believed
10 that the author was not self-aggrandizing or
11 otherwise trying to promote himself in connection
12 with writing the book about a particular operation.
13 Having read that e-mail, do you have a
14 different opinion as to whether Mr. Bissonnette was
15 self-promoting or trying to profit off of his
16 involvement in Operation Neptune Spear?
17 A. No, it doesn't change my view of that. I
18 mean, every author that writes a book is going to
19 profit from it, you know, presumably. So it's not a
20 matter of -- I mean, it's also an individual
21 perception issue. I made a very general statement
22 about those three segments that I referred to, so I
23 don't see anything here that, you know, changes my
24 view of that.
25 I mean, there's clearly an issue of

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1 wanting to give back some of that money to the
2 community, to the -- you know, I understood, you
3 know, later I understood that some of the -- some of
4 the proceeds were intended to go to Naval Special
5 Warfare Family Foundation or something that's a
6 related type of charitable organization.
7 Q. Are you aware that the SEAL Foundation
8 turned Mr. Bissonnette down?
9 A. I believe -- yes, I'm aware. I'm not sure
10 how I became aware of that. I think Matt may have
11 mentioned that at some point, but --
12 Q. And do you know why they turned him down?
13 A. I have no idea.
14 Q. And the SEAL Foundation is a charitable
15 organization, correct?
16 A. As far as I know. Most of the special
17 operations units have a family support type of
18 foundation that's available. I know there's plenty
19 of others I could name that are similar, so I'm
20 assuming it's a 501(c)(3) or some sort of a
21 nonprofit.
22 Q. And yet the SEAL Foundation didn't want
23 any contributions from Mr. Bissonnette?
24 A. Right, that's my understanding.
25 Q. Now, in this e-mail there's a reference to

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1 a person named Warren West. Do you know who that
2 is?
3 A. I do not.
4 Q. You know who Mark Owen is, right?
5 A. Yes. I know what that pseudonym means.
6 Q. If I were to tell you that the pseudonym
7 Warren West is also a reference to -- is a pseudonym
8 for Mr. Bissonnette in connection with his
9 involvement in Hollywood working with HBO and
10 DreamWorks and other movie houses, would that change
11 your view as to whether Mr. Bissonnette was trying
12 to profit off of the -- his involvement with the
13 Navy SEALs?
14 A. No, it doesn't change my view because I
15 think you may be misunderstanding my view or how
16 that's being expressed. It's not that -- you know,
17 and again, it's a personal decision. Somebody may
18 think that, you know, if you make one penny off of
19 your service, then that's -- they don't like that.
20 Other people may have a differing view of it.
21 The predominant -- again, gross
22 generalization, but the predominant beef or, you
23 know, complaint that I think most people that I'm
24 aware of have within the SOF community when somebody
25 does this is not whether or not they make money.

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1 It's how they tell the story.
2 And there are -- we can see, you know,
3 again, for everybody's individual assessment,
4 different people handle things differently, you
5 know, in the public eye as to what their, you know,
6 their involvement was with the service, so -- but
7 nothing about this e-mail or nothing -- assuming
8 what you're saying, I have no reason to believe what
9 you're saying is not true. Even if that is another
10 pseudonym, the fact that he's, you know, running
11 down movie deal aspects of it or other books or
12 whatever, you know, it doesn't -- it doesn't bother
13 me and it doesn't -- and I don't think it would
14 change the opinion of, you know, of necessarily
15 everybody in the community or anything like that
16 because, again, it's more how you tell the story
17 than it is exactly what profits you're making.
18 Q. Now, I want to turn back to Mr. Podlaski.
19 You had earlier said that you felt that he deviated
20 from the standard of care. I'm paraphrasing your
21 testimony.
22 A. Yes, I believe I said that I do -- I do
23 believe that Mr. Podlaski should have advised
24 Mr. Bissonnette, you know, to submit, you know, the
25 manuscript for No Easy Day for prepublication

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1 security review.
2 Q. Is there any other specific departure from
3 the standard of care that you would attribute to
4 Mr. Podlaski's representation of Mr. Bissonnette?
5 A. No, because the one I just highlighted
6 really is the only one I'm -- the only aspect I've
7 ever really considered it in.
8 Q. Do you know the classification level of
9 Operation Neptune Spear?
10 A. Again, we're back to that whole issue
11 of you're talking classification --
12 Q. Classification. Do you know if it's top
13 secret, not top secret, or otherwise? Do you know?
14 A. Again, I'm not trying to be nonresponsive,
15 but I will say that I've never heard of an
16 operation, you know, given a particular label like
17 that. There are -- I would assume that if you were
18 to attribute a label to it, there are only three
19 classifications available. And, you know, so I
20 would assume that it would be a top secret
21 operation, but more accurately, I would say that
22 there are certainly aspects, different aspects that
23 would be at different classification levels.
24 And as we talked earlier, the issue of,
25 you know, other programs that may or may not be

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1 involved in certain aspects of an operation have
2 such an effect on classification issues that, you
3 know, again, that's why I would say that it's, you
4 know, if you had to choose between confidential,
5 secret or top secret, which are the only three
6 classifications that exist, yes, I would assume an
7 operation like that would receive the, you know, the
8 highest level. But I don't know. I wasn't --
9 didn't participate in the operation and don't know
10 how it was -- how it was portrayed.
11 Q. Now, I'm bearing in mind I don't know one
12 way or the other in my question. I just -- I'm
13 going to bear in mind your caveat that there may be
14 aspects of a particular operation that are subject
15 to varying degrees of classification, so I
16 appreciate that. But with that in mind, do you know
17 one way or the other what aspects of Operation
18 Neptune Spear were top secret or something
19 otherwise?
20 A. No.
21 Q. Now, if No Easy Day was submitted for a
22 prepublication review, what in your mind do you
23 think would have happened?
24 A. Again, I can -- I would assume it would
25 run through the same process. It would be very

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1 similar to the process we went through for No Hero.
2 And my assumption is that there, you know, typically
3 there -- haven't seen a manuscript that didn't get
4 some sort of, you know, recommendation or redaction
5 of some sort. But I think it would have been, you
6 know, it would have been reviewed, similar to how
7 the other books that were coming out, you know, at
8 the time, some of which, you know, did discuss the
9 operation.
10 Q. Which books are those that you're
11 referring to?
12 A. Again, this is what we referred to
13 earlier. I can't name all the names. I just know
14 that I'm fairly certain that, you know, Secretary
15 Gates, Secretary Panetta, General McChrystal had
16 books, I believe, that -- I don't know if Brandon
17 Webb put out a book or not. Then there was the
18 other SEAL gentleman that I'm not sure of his name.
19 You know, there were other books that came
20 out. Whether they were totally about that operation
21 or whether that operation was just part of their,
22 you know, part of their structure, I don't know.
23 But my assumption is that the book would have gone
24 through the normal prepublication security review
25 process, and I would expect it to, you know, to

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1 largely survive intact.
2 Q. Do you know what sections of No Easy Day
3 would have survived intact?
4 A. I don't know because I'm not the
5 classification authority, so obviously I wouldn't
6 know that, but --
7 Q. And do you know -- I know I'm asking an
8 obvious question, but the reverse of that is, do you
9 know what sections of the book would have been
10 redacted?
11 A. No.
12 Q. Do you know the time frame that if No Easy
13 Day had been submitted for a prepublication review,
14 say in August of 2012, how long the process would
15 have taken from publication to -- appeal process to
16 a publishable book?
17 A. Obviously I don't know, but my opinion is
18 that it would have taken less time than No Hero took
19 because No Hero is saddled with the baggage from
20 No Easy Day. And so if you want to look at that as
21 a potential model, that's probably the closest thing
22 I would come to.
23 I would assume, you know, something -- I
24 believe the No Hero was we said early January
25 through sometime early April. I believe it would be

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1 some time less than that in length is what I would
2 expect. But again, this is total speculation
3 because, you know, I don't -- you know, there are a
4 lot of other factors that can go in, but I would
5 have no reason to believe that it would take as long
6 as No Hero did.
7 Q. Now, I'm just turning to No Hero. I just
8 want to make sure I understood it. I understood
9 that the appeal of the initial redactions were taken
10 in April -- I'm sorry, the first set of redactions
11 were received from the DOPSR in early April.
12 A. Uh-huh.
13 Q. There was a mid-May 2014 appeal and that
14 the resolution of that appeal was received by letter
15 in August of 2014.
16 A. That's correct as to No Hero, but --
17 Q. As to No Hero.
18 A. -- the speculation that you asked me to do
19 about No Easy Day, I don't know that there would
20 have been an appeal. I'm talking -- I was talking
21 about the first -- getting, you know, from the time
22 you submit a manuscript until you get an
23 approved-as-admitted manuscript, and ideally you're
24 in a situation where there is no appeal. So --
25 Q. So is it your -- so I can understand it,

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1 you're telling me that based on your knowledge and
2 experience, you believe that if No Easy Day was
3 submitted for a prepublication review, it would have
4 been reviewed and in a publishable form within four
5 months of submission?
6 A. I think that DOPSR would have done their
7 best to meet their target of 30 working days, which,
8 you know, often morphs into 45 days to 60 days,
9 something like that. I think you would have seen
10 something in that time frame.
11 But again, it's, you know, I don't know
12 whether there -- you know, I'm not assuming there
13 would be an appeal after that because, again, a lot
14 of what we dealt with in No Hero and using that as a
15 time frame is a little problematic because the time
16 certainly took longer because of the issues that we
17 had inherited from the No Easy Day situation.
18 Q. Isn't it fair to say that in giving your
19 answer about what you believe to -- what would have
20 been the time frame had the book No Easy Day had
21 been submitted for prepublication review, that
22 you're -- essentially you speculate as to what the
23 government would have done?
24 MR. TOBEY: Objection. Form.
25 A. Yeah, I mean, we're talking about

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1 something that didn't happen, so it's hard for me to
2 do it any way other than speculating. I think
3 that's what you're asking me to do is assume what if
4 it were submitted.
5 BY MR. FURMAN:
6 Q. Correct.
7 A. Yes. And that's --
8 Q. And if I asked you this question, I'm
9 going to apologize in advance. Have you had
10 experience in dealing with the review process with
11 the CIA?
12 A. Yes.
13 Q. And do you believe that No Easy Day would
14 have been submitted to the CIA for a review?
15 MR. TOBEY: Objection. Asked and
16 answered.
17 A. Again, generally, if an agency is
18 discussed in a book, I will assume that they're
19 probably going to see it. So I would assume that
20 they would.
21 BY MR. FURMAN:
22 Q. If you were to tell a jury what factors
23 the CIA would consider when they're reviewing a
24 book, what would you tell the jury?
25 A. Well, the -- my assumption is that they

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1 would look at similar factors to what, you know, DOD
2 related components would look at, which are going to
3 be, you know, typically things that, you know, like
4 sensitive locations, you know, TTPs, as we call
5 them, tactics, techniques, and procedures. That
6 typically is the thing that, you know, creates the
7 most angst within any review.
8 And then to the extent they had, you know,
9 different considerations or different issues that
10 were important to them about, you know, a particular
11 subject, then those get injected. But those could
12 be -- those could be -- that could exist or could
13 not exist but would be necessarily, you know, at
14 play if applicable.
15 MR. FURMAN: Why don't we take a -- now I
16 smell food.
17 MR. TOBEY: Yeah. Are you getting hungry?
18 MR. FURMAN: Can we take a break, but can
19 we keep it sort of short?
20 MR. TOBEY: Well, we're right here, so we
21 can take 15, 20 minutes.
22 MR. FURMAN: Is that okay? And then what
23 I'm really aiming to do is to be able to wrap up by
24 3:30.
25 Do you anticipate asking questions?

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1 MR. TOBEY: Just a few minutes.
2 MR. FURMAN: All right. Good. All right.
3 Thank you.
4 (Recess from 1:47 to 2:17)
5 BY MR. FURMAN:
6 Q. Mr. Enslen, do you know whether or not the
7 book No Easy Day contains classified or sensitive
8 information?
9 A. No, I don't.
10 Q. If I can refer you to Exhibit 1, have you
11 seen that letter before, the letter that was written
12 by Mr. Johnson who at the time was general counsel
13 to the Department of Defense on August 30th, 2012,
14 to Mr. Bissonnette care of Penguin Books?
15 A. Yes, I've seen this before.
16 Q. When was the first time you saw it?
17 A. I don't recall specifically, but I assume
18 I would have seen it proximate to the time that I
19 first talked with Mr. Bissonnette in the fall of
20 2013.
21 Q. In the letter, at the end of the second
22 paragraph of the letter, Mr. Johnson states,
23 quote, "In the judgment of the Department of
24 Defense, you are in material breach and violation of
25 the nondisclosure agreements you signed."

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1 Do you agree with that statement based on
2 the information that you now know and also the
3 nondisclosure agreement that was attached to
4 Mr. Johnson's letter?
5 A. In the context of failure to submit for a
6 prepublication security review, yes, I would think
7 that's a correct statement based on what I know.
8 Q. The last sentence of the second paragraph
9 states, quote, "Further public dissemination of your
10 book will aggravate your breach and violation of
11 your agreements." Do you see that?
12 A. Yes.
13 Q. Do you believe that at that point in time
14 the book -- there should have been no further
15 efforts to disseminate No Easy Day based on
16 Mr. Johnson's letter?
17 A. I can't say there shouldn't have been
18 further efforts. I just think it is what it is.
19 They're -- DOD is firing a shot across the bow, and
20 you're proceeding at your own risk at that point,
21 so --
22 Q. Do you know one way or the other whether
23 the book was released for publication on the day of
24 that August 30th, 2012, letter?
25 A. I don't know because, again, I wasn't

<p style="text-align: right;">Page 113</p> <p>1 involved at this stage, so --</p> <p>2 Q. Are you aware of the publication date of</p> <p>3 No Easy Day?</p> <p>4 A. No. I know it was -- my recollection is</p> <p>5 and understanding is that it was sometime not too</p> <p>6 long after this letter, but I don't know exactly</p> <p>7 what the date was.</p> <p>8 Q. Did you review any materials that relate</p> <p>9 to Mr. Luskin's representation of Mr. Bissonnette in</p> <p>10 connection with Mr. Jeh Johnson's letter of</p> <p>11 August 30, 2012?</p> <p>12 A. Ever or at the time of --</p> <p>13 Q. Ever.</p> <p>14 A. Can you -- I have within -- within the</p> <p>15 last -- in preparation for this deposition I have,</p> <p>16 so --</p> <p>17 Q. Have you formed an opinion one way or the</p> <p>18 other as to Mr. Luskin's involvement and work on</p> <p>19 behalf of Mr. Bissonnette in connection with the</p> <p>20 response to Jeh Johnson's August 30, 2012, letter?</p> <p>21 A. No, I haven't.</p> <p>22 Q. Do you believe that Mr. Luskin should have</p> <p>23 told Mr. Bissonnette and his publishers not to</p> <p>24 publish No Easy Day in view of Jeh Johnson's</p> <p>25 August 30th, 2012, letter?</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. This -- I'm sorry. Let me rephrase that.</p> <p>2 Document Exhibit 109 is a copy of the contract that</p> <p>3 was between the publisher and Mr. Bissonnette for</p> <p>4 the book No Easy Day.</p> <p>5 A. Can you repeat the question?</p> <p>6 Q. Yeah.</p> <p>7 A. Or she could read it back.</p> <p>8 Q. Yeah, I can rephrase the question. I want</p> <p>9 to try to make it easier for you.</p> <p>10 Based on your reading of paragraph 4(b),</p> <p>11 do you believe that it would have been contractually</p> <p>12 possible for the publisher to stop publication of</p> <p>13 the book No Easy Day in view of Jeh Johnson's</p> <p>14 August 30th, 2012, letter in order to work out any</p> <p>15 issues with the Department of Defense?</p> <p>16 MR. TOBEY: Objection. Form.</p> <p>17 A. I don't know that it would -- again, with</p> <p>18 the understanding that this is a long contract and</p> <p>19 we're zeroing in on one clause and I haven't read</p> <p>20 all of the other provisions of the contract and</p> <p>21 therefore don't know if something else within this</p> <p>22 contract might unseat that.</p> <p>23 But it's certainly a relevant</p> <p>24 consideration, but I don't -- again, I wasn't</p> <p>25 involved at this stage. I wasn't involved in this</p>
<p style="text-align: right;">Page 114</p> <p>1 MR. TOBEY: Objection. Form.</p> <p>2 A. I really don't know enough of the facts of</p> <p>3 what was -- what was really going on at that time as</p> <p>4 to what would have driven Mr. Luskin's guidance and</p> <p>5 advice on that subject. So, you know, I don't have</p> <p>6 an opinion one way or the other based on that.</p> <p>7 BY MR. FURMAN:</p> <p>8 Q. And if you could take a look at</p> <p>9 Exhibit 109. Bear with me a moment. I need to</p> <p>10 review it myself. I'm going to focus your attention</p> <p>11 on paragraph 4, 4(b). Let me know when you're</p> <p>12 finished reading 4(b). I just have a question in</p> <p>13 relation to that paragraph.</p> <p>14 A. Okay. I've read it.</p> <p>15 Q. If in fact the publisher decided to follow</p> <p>16 the instruction in Jeh Johnson's August 30th letter</p> <p>17 of 2012 to not further disseminate the book No Easy</p> <p>18 Day, do you believe that paragraph 4(b) would have</p> <p>19 rendered such a decision to not be a violation of</p> <p>20 the contract?</p> <p>21 MR. TOBEY: Objection. Form.</p> <p>22 A. And can you identify this -- I know you</p> <p>23 identified the Exhibit 109. We're looking at the</p> <p>24 contract between --</p> <p>25 BY MR. FURMAN:</p>	<p style="text-align: right;">Page 116</p> <p>1 matter, so I don't know if there were other facts</p> <p>2 that may, you know, lead the publisher to decide</p> <p>3 that that wouldn't apply or wouldn't, you know,</p> <p>4 wouldn't be in effect.</p> <p>5 BY MR. FURMAN:</p> <p>6 Q. Do you have any knowledge one way or the</p> <p>7 other as to the decision to move the publication</p> <p>8 date of No Easy Day from September 11th, 2012, to</p> <p>9 September 4th of 2012?</p> <p>10 A. No, I do not.</p> <p>11 Q. Did you -- rephrase that. Start over.</p> <p>12 Do you have any information about</p> <p>13 Mr. Bissonnette's activities that were the focus of</p> <p>14 certain government investigations?</p> <p>15 THE WITNESS: Can you read that back?</p> <p>16 THE REPORTER: Question: "Do you have any</p> <p>17 information about Mr. Bissonnette's activities that</p> <p>18 were the focus of certain government</p> <p>19 investigations?"</p> <p>20 BY MR. FURMAN:</p> <p>21 Q. Other than the book No Easy Day.</p> <p>22 A. I am aware of other aspects,</p> <p>23 investigations that I believe clearly stem from</p> <p>24 No Easy Day that, you know, have gone on since that</p> <p>25 time.</p>

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1 Q. Well, let me ask you some specifics. Are
 2 you aware of the government's investigation of
 3 Mr. Bissonnette in connection with certain artifacts
 4 that he kept in his possession following Operation
 5 Neptune Spear, including but not limited to a
 6 photograph of bin Laden's body after he was killed?
 7 A. No, I'm not aware of any of that.
 8 Q. Are you aware of the government's
 9 investigation of Mr. Bissonnette as it relates to a
 10 business called, quote, Chief Consulting Group,
 11 close quote?
 12 A. That name does not ring a bell. Again,
 13 I'm aware that there were -- there had been ongoing
 14 investigations as, you know, frankly it seems the
 15 federal government has done everything they can to
 16 leave no stone unturned within his life. So I'm
 17 aware of it not from representing him in it, but
 18 those are the same kinds of things like No Easy Day
 19 that have had effects on things such as No Hero and
 20 subsequent things that we've been trying to get
 21 approved from DOPSR.
 22 Q. For example, Mr. Bissonnette was involved
 23 in an enterprise called, quote, The Element Group,
 24 close quote. Have you heard of that enterprise?
 25 A. That name does not ring a bell.

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1 Q. Are you aware generally that
 2 Mr. Bissonnette was involved in either owning
 3 businesses or consulting with businesses that were
 4 alleged to have contracts with the Navy?
 5 A. I recall there being some mention of, you
 6 know, some kind of consulting, some kind of
 7 consulting agreement. But again, I wasn't handling
 8 it. It was just something that I recall going on in
 9 parallel and that I was made aware of because, you
 10 know, of the potential for it to have effects on
 11 things that we were continuing to try to, you know,
 12 get approved through OSR or DOPSR.
 13 Q. And finally, the video game Medal of
 14 Honor, are you aware of Mr. Bissonnette's
 15 involvement with Medal of Honor, the video game, and
 16 the government's investigation of that?
 17 A. That rings a bell that that was part of an
 18 investigation. I'm not specifically aware of
 19 anything related to that. Again, that was really
 20 before my time.
 21 MR. FURMAN: I think I'm very close to
 22 wrapping up. Could I just have a quick moment --
 23 MR. TOBEY: Sure.
 24 MR. FURMAN: -- just to review my notes?
 25 And we can go off the record.

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1 (Recess from 2:32 to 2:35)
 2 BY MR. FURMAN:
 3 Q. Referring to Exhibit 1 and the attachments
 4 to Jeh Johnson's letter, do you have an opinion one
 5 way or the other as to whether the DD-1847 that was
 6 signed by Mr. Bissonnette in 2007 should have
 7 applied to the contents of No Easy Day?
 8 A. Yes, in my view it would, just from the
 9 simple standpoint that once you're read on, you're
 10 read on until you're read off. So, yes.
 11 Q. There are acronyms -- and I'm going to
 12 point to the section of DD-1847 that is at the very
 13 beginning of it. In the preamble there are some
 14 acronyms that are at the very top of the SCI
 15 nondisclosure agreement.
 16 And I believe the best way to do it is for
 17 me to show it to you on the eighth page of
 18 Exhibit 1. And I appreciate that it's very hard to
 19 read, and I doubt the government intended for it to
 20 be so hard to read, but there are acronyms that
 21 relate to what appear to be certain SAP programs.
 22 Do you know what those acronyms stand for?
 23 A. Yes, I do.
 24 Q. Could you tell me what they stand for?
 25 A. I cannot tell you what they stand for.

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1 Q. And I don't know if you can answer this
 2 question, but based on your knowledge of what those
 3 acronyms stand for, do you believe that for that
 4 reason the DD-1847 that was signed in 2007 relates
 5 to the contents of No Easy Day, or is that something
 6 that you cannot tell me?
 7 A. Well, it really goes to your last question
 8 on this. To me it's -- in terms of -- this really
 9 defines what you're read on for specifically. I
 10 mean, what I can say is that as other programs
 11 obviously as you've already identified these as, you
 12 know, program acronyms, that's -- that's what you're
 13 read on for. And until you're read off, which is
 14 what you would see if you continue on for a read-off
 15 sheet, that's what you're read off for.
 16 So whether those programs would
 17 specifically apply to, you know, the subject matter
 18 of No Easy Day, first of all, I wouldn't be
 19 qualified to answer that having not been involved in
 20 that operation. And if I was, I wouldn't be able to
 21 answer that question, so --
 22 MR. FURMAN: So I want to take that
 23 answer, both parts of that answer just to break it
 24 down. Let me just have it read back, the answer,
 25 and I'll work off of that. Thanks.

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1 (The answer was read)

2 BY MR. FURMAN:

3 Q. So I'm now working off of that answer. If

4 you were read on to the program that comprises of

5 this part if not all of Operation Neptune Spear, you

6 wouldn't be able to tell me, because of the

7 classification of that information, whether or not

8 No Easy Day violates that nondisclosure agreement.

9 Is that correct?

10 A. No, I wouldn't -- I would say that's not

11 correct. I believe that the -- maybe the reason for

12 reading something on is being taken a little bit out

13 of context maybe. I mean, individuals are read on

14 for certain programs. Whether those programs become

15 applicable to particular operations, you would only

16 know if you were involved in the operation.

17 And, you know, the reason I said I

18 wouldn't be able to respond if I was involved in it,

19 I'm only going to be able to discuss that with other

20 people that are similarly read on. Does that make

21 sense?

22 Q. Well, the reason I'm asking that is

23 because what I don't understand is if there are

24 elements of the book No Easy Day that would fall

25 within any one of those acronyms that are on the

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1 DD-1847 that is attached to Exhibit No. 1 that was

2 signed in 2007, by definition Mr. Bissonnette's book

3 would not have been allowed to be published. At

4 least that's my understanding.

5 A. In response to that, I would say the

6 concern would not be that if anything in that book

7 related to anything, you know, here, because these

8 programs, the fact that something -- if there was

9 something that was pertinent to one of these

10 programs that went on in the operation, then it

11 wouldn't necessarily render, you know, a portrayal

12 of the operation, you know, invalid or anything like

13 that or problematic. I mean, in other words, these

14 are -- things are compartmented for a reason,

15 because they want certain things, you know, not to

16 be, you know, widely disseminated.

17 So, you know, but just because -- I mean,

18 most operations, quite frankly, are going to be

19 subject to, in the special operations community, are

20 going to be subject from time to time to different,

21 you know, programs. But that doesn't -- doesn't

22 render the entire operation, you know, off limits

23 from discussion, or it might.

24 It just depends on what -- that's why

25 it's -- I'm not trying to be evasive. I'm just

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1 trying to -- I'm trying to put a round peg into a

2 square hole really is what I feel like, honestly,

3 when we're talking about how being read on for these

4 programs in 2007 and the effect of those on,

5 specifically on an operation in 2011 is a, you know,

6 is a difficult, you know, point to get to.

7 Q. I understand. So let me point you from a

8 different angle. Would you need to know what

9 information is within the compartmented

10 nondisclosure agreement, what information

11 Mr. Bissonnette was read on to, would you need to

12 know that before you can determine what parts, if

13 any, were objectionable in No Easy Day?

14 A. That's why you have a prepublication

15 security review process, because the classifying

16 authority is how you would know that. They would

17 determine that.

18 Q. And without knowing that -- and this is, I

19 guess, the follow-up question to that is without

20 knowing what that information is, how could you, me,

21 or a jury know what aspects of No Easy Day would be

22 publishable or not?

23 A. Well, in a general sense, anyone who had

24 been read on for SCI before would have a pretty good

25 idea. You know, again, every operation is

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1 different. If you're not involved in an operation,

2 you're not involved in it, so you're not going to

3 have specific knowledge.

4 But the way these programs work, again,

5 you know, these -- if you're read on for these and,

6 you know, just based on experience within, you know,

7 the military and having been, again, holding an SCI

8 billet, read on for SCI programs, you have a pretty

9 good idea.

10 But again, it wouldn't be your call.

11 That's what DOPSR and that process is for. You

12 know, that's why they're not going to let an author,

13 even if the author says, you know, I am -- I've been

14 read on for these things, I know I can do this

15 myself, that's why there's a process, because that's

16 the oversight and that's why the process is so, you

17 know, so critical.

18 Q. Just a few follow-up questions, and I

19 think I'm done.

20 Was there a coauthor with No Hero?

21 A. Yes.

22 Q. That was Kevin Maurer?

23 A. Yes.

24 Q. Was he -- I'm sorry. Strike that.

25 Did Mr. Maurer receive any kind of

<p style="text-align: right;">Page 125</p> <p>1 authority from the government before he became</p> <p>2 involved in writing the book, prior to the</p> <p>3 prepublication process?</p> <p>4 MR. TOBEY: Objection. Form.</p> <p>5 BY MR. FURMAN:</p> <p>6 Q. In other words -- strike that. Let me ask</p> <p>7 a better question.</p> <p>8 Did Mr. Maurer seek approval or clearance</p> <p>9 from the DOPSR before he became involved in the</p> <p>10 preparation of the manuscript with Mr. Bissonnette</p> <p>11 for No Hero?</p> <p>12 A. I don't know.</p> <p>13 Q. Should he have done that?</p> <p>14 A. In my opinion, there would be nothing</p> <p>15 to -- I don't know what you would apply for or what</p> <p>16 you would ask them for. I mean, essentially they're</p> <p>17 going to say send me a manuscript, we're going to</p> <p>18 put it through the process and tell you if there's a</p> <p>19 problem.</p> <p>20 Q. You mentioned earlier that the DOPSR is</p> <p>21 more comfortable with someone, say, like you who has</p> <p>22 security clearance in handling the process. In</p> <p>23 other words, you would get a copy of the manuscript</p> <p>24 and then hand it over to the DOPSR, and the</p> <p>25 confidence that the government has is that since you</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. Do you know whether or not Mr. Maurer</p> <p>2 sought clearance from the government prior to his</p> <p>3 receipt of the manuscript of No Easy Day?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know or have an opinion as to</p> <p>6 whether he should have gotten clearance before he</p> <p>7 received the manuscript of No Easy Day before the</p> <p>8 government did?</p> <p>9 A. Again, I'm not certain what kind of</p> <p>10 clearance you're talking about because that really</p> <p>11 isn't part of their process. So, no. My opinion is</p> <p>12 that there's nothing he should have sought to get</p> <p>13 because I'm not aware of a process to get any such</p> <p>14 clearance.</p> <p>15 MR. FURMAN: Okay. I don't have any</p> <p>16 further questions. Thank you very much.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MR. FURMAN: And if I didn't say so</p> <p>19 before, and I don't mind saying it on the record,</p> <p>20 thank you for your service to this country. Thank</p> <p>21 you.</p> <p>22 THE WITNESS: Thank you for that. Thank</p> <p>23 you for the support.</p> <p>24 MR. TOBEY: Absolutely.</p> <p>25</p>
<p style="text-align: right;">Page 126</p> <p>1 have clearance, you know how to handle that</p> <p>2 information.</p> <p>3 A. Well, that's a broad assumption on my part</p> <p>4 and fairly a self-serving assumption on my part as</p> <p>5 attorney working on the book, but that's not a</p> <p>6 requirement. You know, there's coauthors, you know,</p> <p>7 fairly frequently not going to have, you know,</p> <p>8 they're not going to have the clearance that</p> <p>9 somebody might have had.</p> <p>10 But once you don't have a clearance, the</p> <p>11 fact that you did have a clearance is nice, but</p> <p>12 it's -- you don't have a clearance. It is what it</p> <p>13 is at the time. It's a snapshot. And so that's one</p> <p>14 of the reasons that OSR relies on their process.</p> <p>15 They're like, here, give it to us, we'll determine</p> <p>16 what, you know, what needs to be -- needs to be</p> <p>17 redacted.</p> <p>18 Q. In respect of No Easy Day, you're aware</p> <p>19 that Mr. Maurer also worked on that book as well.</p> <p>20 Yes?</p> <p>21 A. Uh-huh.</p> <p>22 Q. It's the first time in this long day that</p> <p>23 I've had to ask you to keep your answers verbal.</p> <p>24 A. I just nodded. I told you I was going to</p> <p>25 fall asleep.</p>	<p style="text-align: right;">Page 128</p> <p>1 EXAMINATION</p> <p>2 BY MR. TOBEY:</p> <p>3 Q. Let me follow up -- first let me introduce</p> <p>4 myself. My name's Robert Tobey. I represent</p> <p>5 Mr. Bissonnette in this lawsuit. And you and I, I</p> <p>6 guess, met for the first time in person yesterday?</p> <p>7 A. Correct.</p> <p>8 Q. Let me ask you some follow-ups to what</p> <p>9 Mr. Furman kind of ended with, which is asking you</p> <p>10 what could be said in a book.</p> <p>11 To your knowledge, as long as there is no</p> <p>12 confidential information contained in the book,</p> <p>13 would there be anything to prevent Mr. Bissonnette</p> <p>14 from writing the story about Operation Neptune</p> <p>15 Spear?</p> <p>16 A. No.</p> <p>17 Q. And assuming there was no confidential</p> <p>18 information used, would there be anything to prevent</p> <p>19 Mr. Bissonnette from writing a story about the</p> <p>20 Captain Phillips issue?</p> <p>21 A. No.</p> <p>22 Q. And I think Mr. Furman asked you this</p> <p>23 question on direct, but let me make sure I have a</p> <p>24 clear answer. Do you believe that there was</p> <p>25 confidential information in No Easy Day?</p>

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1 A. Let me clarify. When you say confidential
2 information, are you --
3 Q. Classified information --
4 A. Classified information.
5 Q. -- is the word I meant to use. Used the
6 wrong word there.
7 A. Okay.
8 Q. Do you believe there was classified
9 information in No Easy Day, just upon your review of
10 it?
11 A. No, I have no reason to believe there was
12 classified information in it based on my review.
13 Q. All right. And assuming that book had
14 been submitted for a prepublication review to the
15 DOPSR, do you anticipate that some redactions would
16 have been made by that agency?
17 A. Yes, because I've never had one submitted
18 to DOPSR that didn't contain some kind of redaction.
19 I would not have expected there to be much in the
20 way of redaction, but --
21 Q. Okay. Do you anticipate that the
22 redactions that would have been made by DOPSR would
23 have been impossible for Mr. Bissonnette and
24 Mr. Maurer to write around?
25 A. No. I believe that in my experience with

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1 the process, redactions -- for one, that's why the
2 appeal process exists, because it gives you the
3 opportunity to suggest an alternate -- alternate
4 language or an alternate way of, you know,
5 portraying something. So I do believe they would
6 have been able to write around any problems that may
7 have been highlighted by DOPSR during the review
8 process.
9 Q. Okay. You indicated, I believe, on a
10 question from Mr. Furman that one of the things that
11 a lawyer should do when they're representing an
12 author is to confirm the documents that the author
13 may have signed with the government.
14 A. That's correct. They've got to know
15 what -- you've got to know what standard they're
16 being held to before you can really help them comply
17 with, you know, with that standard.
18 Q. And do you know what, if anything,
19 Mr. Podlaski did to get that confirmation from
20 Mr. Bissonnette?
21 A. I do not know.
22 Q. All right. In your opinion, is it a good
23 idea for the lawyer to rely on the author's memory
24 of what he or she may have signed with the
25 government?

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1 A. No, that would not be a good idea because
2 there are different forms. I mean, we're looking at
3 the ones attached to Exhibit No. 1, you know, make
4 that clear that there are different form numbers and
5 there are different form versions and things like
6 that. And in my experience, the different commands,
7 you know, may use different forms, and so therefore
8 the verbiage may be slightly different.
9 So, just to know what the standard is,
10 again, it would be -- I would never rely on, you
11 know, verbal -- you know, there's a document.
12 That's the best evidence of what the standard is, so
13 need to see the documents that were executed by the
14 individual.
15 Q. And assume with me that the lawyer asked
16 the question to the author "What have you signed"
17 and the author responds "I don't know." What should
18 the lawyer's next step be in that situation?
19 A. Well, I would say to the client, well,
20 we've got to find out. We've got to request those
21 documents. We've got to get them because one way or
22 the other we've still got to find out what that
23 standard is.
24 You know, the fact that the author says --
25 if the author says, hey, I've never been read on for

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1 SCI so I've never signed any of that, okay, that
2 whittles it down a little bit. So you would still
3 want to see whatever it is they executed because,
4 again, I know of no other way of knowing what
5 standard the government is going to hold you to with
6 regard to your, you know, your nondisclosure
7 statements, nondisclosure agreements that you've
8 made with them without seeing those documents.
9 Q. And is there a procedure that exists so
10 that either the author or the lawyer for the author
11 can go to somebody in the government and say we need
12 to see everything that the author has signed?
13 A. I think there are various procedures that
14 exist, you know, that whether it's going back to
15 your -- what's called your SSO, to use an acronym
16 that I think came out earlier in the deposition, or
17 to make a request through the, you know, the defense
18 department or the component of the defense
19 department that individual worked for. There are
20 procedures, and it just depends on which note or
21 which level that you would try to go to. And a lot
22 of that would be driven by who held that clearance
23 or where were they read on, where was their last
24 SSO, that kind of thing. So, yes, there is -- there
25 are multiple processes that would allow that to

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1 happen.
2 Q. All right. And in this case do you know
3 what steps, if any, that Mr. Podlaski took to
4 determine what Mr. Bissonnette may have signed with
5 the government?
6 A. I do not know what steps he took.
7 Q. Now, you alluded two or three times in
8 questions from Mr. Furman that there were
9 difficulties in going through the review process
10 with No Hero as a result of No Easy Day not having
11 been submitted for a prepublication review. Do you
12 recall that?
13 A. Yes.
14 Q. Can you tell us more specifically what
15 those difficulties were?
16 A. Well, as I said, obviously when this thing
17 started, when No Hero started, the DOPSR point of
18 contact was well aware of who Mr. Bissonnette was
19 and was aware to some extent, I'm not sure to what
20 extent, but was aware to some extent of the problems
21 associated with No Easy Day.
22 So that was a concern that I discussed
23 with him at the beginning to make sure that they
24 understood, you know, without question that
25 Mr. Bissonnette was, you know, absolutely

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1 100 percent committed to fulfilling his obligations
2 to the U.S. Government and that, you know,
3 essentially we wanted to cross every T, dot every I,
4 and make sure that there was no question about that
5 intent and then also during the review.
6 So, because my concern was that I didn't
7 want spillover from one situation that, you know, I
8 wasn't involved with, and so therefore I wasn't
9 aware of what all the issues were. But I just knew
10 I did not want them to taint the process for
11 No Hero. Unfortunately, I believe it did contribute
12 to a slowdown in the No Hero processing. You know,
13 I've always found DOPSR, though, to be professional
14 and, you know, to try to keep things in their
15 separate lanes as much as possible, and I think by
16 and large they did. But there was no doubt that we
17 experienced additional delay in No Hero because of
18 what happened in No Easy Day.
19 Q. And I think you indicated that you
20 actually challenged 127 redactions in No Hero?
21 A. That's correct.
22 Q. And there were more redactions than that,
23 but you only challenged 127 of them.
24 A. That's correct.
25 Q. All right. Do you believe if No Easy Day

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1 had been submitted for a prepublication review, that
2 you would have received many fewer redactions in
3 response by the DOPSR --
4 MR. FURMAN: Objection.
5 BY MR. TOBEY:
6 Q. -- for No Hero?
7 A. Yes, I do.
8 Q. And what is the basis for that opinion?
9 A. Again, I believe it was held to -- I'm not
10 saying by DOPSR, but I do believe there were
11 reviewing components that certainly gave more
12 scrutiny to No Hero because of No Easy Day based on
13 what some of the redactions that we received, some
14 of which we won on challenges after it was called to
15 their attention.
16 Q. And let me ask you this. You indicated, I
17 think, an answer just a moment ago that in your
18 experience the DOPSR does their job.
19 A. Yes.
20 Q. Do you have any reason to believe that if
21 No Easy Day had been submitted to a prepublication
22 review that the DOPSR would have just sat on it; in
23 other words, never done their job?
24 A. I don't -- I don't think they would have
25 done that. I think they would have processed it

Page 136

1 like any other, any other publication they received.
2 They didn't -- you know, frankly, they -- as I said,
3 a concern was to make sure they didn't sit on
4 No Hero, and to their credit they did not. It was
5 processed despite them knowing what they knew about
6 No Easy Day.
7 But again, once it gets to the reviewing
8 components, that's the part that you're more distal
9 from, from that part of the operation, and therefore
10 really don't have as much visibility over what the
11 intentions are by the reviewing components.
12 Q. But just to summarize, you don't have any
13 reason to believe that the DOPSR would have just not
14 done their job --
15 A. I have no reason to --
16 Q. -- in regard to No Easy Day?
17 A. That's correct. I have no reason to
18 believe that they would not have done their job.
19 Q. You indicated in questions from Mr. Furman
20 that you believe that Mr. Podlaski violated the
21 standard of care by not advising Mr. Bissonnette to
22 get a prepublication review of No Easy Day. Do you
23 recall that answer?
24 A. Yes.
25 Q. Do you also believe that that act was a

Page 137

1 proximate cause of damage to Mr. Bissonnette?

2 A. Yes, absolutely.

3 Q. Okay. Have you done anything to quantify

4 those damages?

5 A. I have not.

6 Q. Okay. Going back to No Easy Day, do you

7 believe that there's anything in the book that would

8 jeopardize the security of the United States?

9 A. No, I don't.

10 Q. Do you believe there was anything in that

11 book that would jeopardize the safety of any members

12 of the United States military, including Navy SEALs?

13 A. No, I don't. And I can assure you that if

14 I did have anything close to that kind of concern,

15 then my answer would be different, so --

16 MR. TOBEY: Pass the witness.

17 MR. FURMAN: You know I love that.

18 No further questions. Mr. Enslen, thanks for your

19 time. Appreciate it.

20 THE REPORTER: Could I get copy orders on

21 the record?

22 MR. TOBEY: Yes. I'd like a copy. I

23 think we're getting a rough.

24 MR. FURMAN: Yeah.

25 MR. TOBEY: And I'd like the e-transcript.

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1 (Deposition concluded at 3:03 p.m.)

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Page 139

1 CHANGES AND SIGNATURE

2 WITNESS NAME: DATE OF DEPOSITION:

3 ALAN ENSLEN JANUARY 24, 2017

4 PAGE LINE CHANGE REASON

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Page 140

1 I, ALAN ENSLEN, have read the foregoing

2 deposition and hereby affix by signature that same

3 is true and correct, except as noted above.

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Page 141

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF INDIANA
3 MATTHEW BISSONNETTE,)
4 Plaintiff,)
5 vs.) Case No. 1:15-cv-00334
6 KEVIN PODLASKI and CARSON)
BOXBERGER, LLP,)
7 Defendants.)
8

9 REPORTER'S CERTIFICATE
ORAL DEPOSITION OF ALAN ENSLEN
10 JANUARY 24, 2017

11 I, KAREN L. SHELTON, a Certified Shorthand
12 Reporter in and for the State of Texas, hereby
13 certify to the following:

14 That the witness, ALAN ENSLEN, was duly
15 sworn by the officer and that the transcript of the
16 oral deposition is a true record of the testimony
17 given by the witness;

18 I further certify that pursuant to FRCP
19 Rule 30(e) that the signature by the deponent:

20 X was requested by the deponent or a
21 party before the completion of the deposition and is
22 to be returned within 30 days from date of receipt
23 of the transcript. If returned, the attached Errata
24 contains any changes and the reasons therefor;
25 was not requested by the deponent or a

Page 142

1 party before the completion of the deposition.

2 I further certify that I am neither
3 counsel for, related to, nor employed by any of the
4 parties in or counsel to this action, nor am I
5 financially or otherwise interested in the outcome
6 of this action.

7 Certified to by me this 1st day of
8 February, 2017.

9
10 *Karen L. Shelton*
11
12 Karen L. Shelton, CSR/RDR/CRR
13 Texas CSR 7050, Exp. 12/31/2018
Esquire Solutions
14 CRCE Registration No. 286
1700 Pacific Avenue
15 Suite 1000
Dallas, Texas 75201
16 (214) 257-1436
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ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

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1 I, ALAN ENSLEN, have read the foregoing
2 deposition and hereby affix by signature that same
3 is true and correct, except as noted above.

4 Alan Enslen

5 ALAN ENSLEN

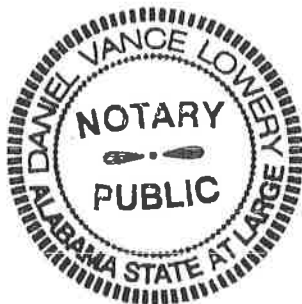
6
7 STATE OF Alabama)

8 COUNTY OF Jefferson)

9 Before me, Daniel Lowery, on this
10 day personally appeared ALAN ENSLEN, known to me (or
11 proved to me under oath or through

12 _____) (description of identity card or
13 other document) to be the person whose name is
14 subscribed to the foregoing instrument and
15 acknowledged to me that they executed the same for
16 the purposes and consideration therein expressed.

17 Given under my hand and seal of office
18 this 6th day of March, 2017.



24 D. V. Lowery
25 NOTARY PUBLIC IN AND FOR
THE STATE OF Alabama

My Commission Expires: 9/21/2020

ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

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CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE CHANGE REASON

7 3 Insert "No Hero" so that testimony
reads "...for the No Hero manuscript he"
Reason: clarification;

11 5 Delete "and a half" Reason: accuracy;

12 10-11 Delete "joint Special Forces officer," and
word "so" (in Line 11) so that testimony
reads "... so, as a joint special operations
officer, I" Reason: accuracy/readability;

21 18 Insert "additional" so that testimony reads
"Something additional is required."
Reason: accuracy;

25 19 ~~Delete~~ ^{AFE} Replace "types" with "type"
Reason: grammar;

26 4 Replace "administrative" with "administrator"
Reason: accuracy;

ALAN ENSLEN
MATTHEW BISSONNETTE vs KEVIN PODLASKIJanuary 24, 2017
139

CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

28 6 Replace "necessary" with "necessarily"
Reason: accuracy;

28 17 Insert "of understanding" so that
testimony reads "... I don't have that
level of understanding."
Reason: accuracy/clarification;

30 13 Insert "and" after word "control"
Reason: accuracy;

31 14 Insert "who" after word "firm"
Reason: accuracy/readability;

36 22-23 Delete "where I will say there was"
Insert "-" after word "discrepancy" so
that testimony reads "... little discrepancy
- an inconsistency"
Reason: clarification/readability;

ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

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CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

37 17 Delete "with" Reason: readability;

38 ^{AF2} ~~18~~ 14 Insert "also" so that testimony reads
 "... OSK was also trying to revise"
Reason: accuracy/readability;

43 18-20 Delete "their discussions but not --
 it's not pure visibility over that"
 so that ~~who~~ ^{AF2} testimony reads
 "visibility over. So understand...."
Reason: accuracy/readability;

44 22 Delete "that back and you get"
Reason: readability;

45 5 Delete "proposing --"
Reason: accuracy;

45 20 Replace "one" with "manuscript"
Reason: accuracy/clarification;

CHANGES AND SIGNATURE

WITNESS NAME:

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ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

46 7

Delete "meaning"Insert "I mean" so that testimony reads "By amorphous I mean that...."
Reason: accuracy/readability;

50 3

Insert "personnel" after "NAVSPECWAR.COM"
Reason: accuracy;

53 15

Delete "will" Reason: readability;

53 25

Delete "because" Reason: readability;

56 13

Replace "evaluating" with "using to evaluate"
Reason: accuracy/clarification;

59 8

Insert "is Operation Neptune Spear" after word "gist"
Reason: accuracy/clarification;

59 25

Replace "about" with "and"
Reason: accuracy;

ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

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CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

62

12

Replace "in" with "end"

Reason: accuracy;

63

19

Insert "to" after "straight"

Reason: accuracy/readability;

64

24

Delete "for themselves"

Reason: readability/accuracy;

70

7

Delete "is" Reason: accuracy;

70

17

Replace "should" with "would"

Reason: accuracy;

71

23

Insert "me" after "told"

Reason: accuracy/clarification;

74

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Delete "as recommended," Reason: accuracy;

74

8

Delete "itself" Reason: accuracy;ESQUIRE
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(Errata 5 of 9)

ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

139

CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

74 21 Replace "have" with "give"

Reason: accuracy;80 20 Delete "the" Reason: accuracy;80 22 Delete the word "to" just prior
to the word "which"Reason: accuracy/readability;80 23 Insert "had" after "have"
Reason: accuracy;82 8 Insert "the public domain" after
the word "in" so that testimony reads
"they were in the public domain prior to..."
Reason: accuracy/clarification;83 14 Insert "in" before the word "an"
Reason: accuracy;ESQUIRE
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(Errata 6 of 9)

CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

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JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

84 6

Delete "or something" after the
name "Gates" Reason: accuracy/readability;

86 19

Replace "counter" with "contrary"
Reason: accuracy;

92 14

Delete "and" Reason: readability;

92 25

Insert "one" after "and"
Reason: accuracy;

93 15

Insert "SOF" after "the"
Reason: accuracy;

93 18

Insert "also" after "there's"
Reason: accuracy/readability;

95 15

Delete: "I've not --"
Reason: accuracy/clarification;

ALAN ENSLEN

January 24, 2017

MATTHEW BISSONNETTE vs KEVIN PODLASKI

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CHANGES AND SIGNATURE

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DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

96 17

Delete

"But if it's - -"

Reason: readability;

106 19

Replace "is" with "was"

Reason: accuracy;

118 12

Delete "OSR or" Reason: accuracy;

120 15

Replace "that's" with "that remains"

Reason: clarification;

120 15

Replace "off" with "on"

Reason: accuracy;

121 10

Delete "No, I wouldn't - -"

Reason: Clarification;

121 12

Replace "something" with "someone"

Reason: accuracy;

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Alan Paul

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(Exhibit 8 of 9)

CHANGES AND SIGNATURE

WITNESS NAME:

DATE OF DEPOSITION:

ALAN ENSLEN

JANUARY 24, 2017

PAGE LINE

CHANGE

REASON

126

4

Insert "a" before the word "fairly"
and Delete "a" after the word "fairly"
Reason: clarification/accuracy;

131 12

Insert "you" after "so"
Reason: accuracy;

132 20

Replace "note" with "node"
Reason: accuracy;

133 23

Replace "him" with "them"
Reason: accuracy;

135 13

Delete "what"
Reason: accuracy/readability.


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(Exhibit 9 of 9)